IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

**MISSISSIPPI INSURANCE DEPARTMENT,
by and through MICHAEL J. CHANEY, COMMISSIONER
OF INSURANCE FOR THE STATE OF MISSISSIPPI** **PLAINTIFF**

VS. **CASE NO. 1:13CV379 LG-JMR**

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; RAND BEERS, in his official capacity as the Secretary of the United States Department of Homeland Security; UNITED STATES FEDERAL EMERGENCY MANAGEMENT AGENCY; W. CRAIG FUGATE, in his official capacity as the Administrator of the United States Federal Emergency Management Agency **DEFENDANTS**

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff, the MISSISSIPPI INSURANCE DEPARTMENT ("the Department"), by and through MICHAEL J. CHANEY, COMMISSIONER OF INSURANCE FOR THE STATE OF MISSISSIPPI, and files this its Complaint against the Defendants, the UNITED STATES DEPARTMENT OF HOMELAND SECURITY, RAND BEERS, in his official capacity as the Secretary of the United States Department of Homeland Security, UNITED STATES FEDERAL EMERGENCY MANAGEMENT AGENCY, and W. CRAIG FUGATE, in his official capacity as the Administrator of the United States Federal Emergency Management Agency, and states as follows:

I.

NATURE OF THE CASE

1. This is an action seeking declaratory and injunctive relief from the "National Flood Insurance Program", 42 U.S.C. § 4001, et seq., ("NFIP") as amended by the "Biggert-Waters Flood Insurance Reform and Modernization Act of 2012," H.R. 4348 ("BW-12")

(collectively "the Act").

2. BW-12 was passed in July, 2012, and was signed by the President on July 6, 2012. [112 PL 141]. BW-12 extends the NFIP for five years, while requiring significant program reform. The law requires changes to all major components of the program, including flood insurance, flood hazard mapping, grants, and the management of flood plains. Many of the changes are designed to make the NFIP more financially stable, and ensure that flood insurance rates more accurately reflect the real risk of flooding. What the legislation significantly did not address is the effects of the changes on policyholders and the affordability of flood insurance policies for those that truly cannot afford the increases. While there are mandatory studies included in BW-12, specifically, 112 PL 141, § 100236, intended to examine affordability issues with a stated deadline which has come and gone, the study has still not been completed and may not be completed for several years to come. Additionally, there are other studies and reports mandated by BW-12 by specified deadlines which have likewise come and gone and which FEMA has yet to obtain. Without this crucial information, FEMA plainly lacked and continues to lack the necessary information to avoid arbitrary and capricious decision making.

3. Although there are bills proposed in Congress that would roll back the premiums or lengthen the time policyholders would have to move to full risk premium rates, Congress did not act in time to avoid substantial rate increases scheduled by the Federal Emergency Management Agency ("FEMA") for October 1, 2013.

4. The passage of BW-12 is perceived as an oncoming economic disaster to Mississippi citizens and other persons having homes or businesses located in a flood zone. Among

other changes, the BW-12 phases out NFIP premium subsidies for owners of homes, repetitive loss properties and others who have been shielded from higher premiums. The law also requires new flood maps, some of which mean properties that were never required to have flood insurance now have to have it. The changes are causing sizable increases in renewal premiums for some property owners and requiring others to purchase flood insurance for the first time. For others, the rising premiums are making it difficult for them to sell their homes. The October 1, 2013 implementation of portions of BW-12 will have a devastating economic impact on the citizens of Mississippi, particularly those regions which are still struggling to recover from Hurricane Katrina.

5. Under the Administrative Procedure Act ("APA"), a federal court possesses the authority to "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1). Because the stated purpose of the NFIP is to make "flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection" remains unchanged by BW-12, the Department maintains that FEMA's failure to obtain the various studies and other assistance mandated by BW-12 prior to October 1, 2013 amounts to an "agency action unlawfully withheld or unreasonably delayed" subject to review and remedial action provided for under §706(1) of the APA.

II.

JURISDICTION AND VENUE

6. The Court has in personam and subject-matter jurisdiction over the parties and issues involved in this lawsuit. See, e.g., 28 U.S.C. § 1331 (action arises under the Constitution and laws of the United States); 28 USC Sec. 1346(a)(2) (United States as a party

defendant); 28 U.S.C. § 2201 (declaratory relief); and 28 U.S.C. §1361 ("The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."). Furthermore, the Administrative Procedures Act, 5 U.S.C. § 701 et seq., ("the APA") provides for the review of agency actions and authorizes grants of injunctive relief when appropriate, including but not limited to the circumstances described in 5 U.S.C. §702 and §706(1).

7. Venue is proper before this Court under 28 USC §1391(e) because a substantial number of NFIP policies affected by BW-12 are located on the coastal area, and the Mississippi Insurance Department maintains an office in Gulfport, Mississippi. Furthermore, although citizens of Mississippi throughout the entire State of Mississippi are affected by the issues complained of herein, some of the most egregiously affected persons reside in the Gulf Coast area of the State of Mississippi. The Mississippi Insurance Department regulates and issues privilege licenses for the insurance agents and agencies that sell flood insurance within the State of Mississippi, including both policies procured through the National Flood Insurance Program and also excess or surplus flood insurance policies sold through private companies.

III.

PARTIES

8. Plaintiff, the Mississippi Insurance Department, is an agency of the State of Mississippi created by § 83-1-1 of the Mississippi Code of 1972, which provides that the Department of Insurance "shall be charged with the execution of all laws (except as otherwise

specifically provided by statute) now in force, or which may hereafter be enacted, relative to all insurance and all insurance companies, corporations, associations, or orders." Section 83-1-17 of the Mississippi Code of 1972 further empowers the Commissioner to compel compliance with the provisions of Title 83 of the Mississippi Code of 1972 with respect to obligations, prohibitions, and the payment of taxes, fees, and penalties by and upon foreign insurance companies or other insurers, and compliance "may be enforced by the commissioner by suit in the name of the state." Among other things the Department licenses and regulates Mississippi insurance agents and agencies who sell and administer flood insurance coverage under the Act. Furthermore, "[t]he duty and responsibility of the Commissioner of Insurance is prescribed primarily for the protection of policyholders and the public." *Sanders v. Neely*, 19 So.2d 424, at 430 (Miss. 1944). These duties include, among others, approval of various policy forms, requiring the deposit of sufficient securities with the state, and such other supervision as is provided for in the interest of the policyholders, and the public at large. The Commissioner and the Mississippi Attorney General's office have similar authority to enforce the statutory provisions relating to insurance by the institution of suit. *Gandy v. Reserve Life Ins. Co.* 279 So. 2d 648 (Miss. 1973). Michael J. Chaney is the duly elected Commissioner of Insurance for the State of Mississippi, and is the chief officer of the Mississippi Department of Insurance pursuant to § 83-1-3 of the Mississippi Code of 1972.

9. Defendant, the United States Department of Homeland Security ("DHS"), is an agency of the United States Government, and is responsible for administration of the NFIP through FEMA. DHS is sued by and through Rand Beers, in his official capacity as the Secretary

of the United States Department of Homeland Security who may be served with process pursuant to Rule 4 of the Federal Rules of Civil Procedure. FEMA is sued by and through Craig Fugate, the FEMA Administrator, in his official capacity, who may be served with process pursuant to Rule 4 of the Federal Rules of Civil Procedure. FEMA, by way of its director, has the responsibility for providing "by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage ....". 42 U.S.C. § 4013(a). The regulations, having by now long been promulgated, are contained in 44 C.F.R. §§ 59.1-75.14 (2013).

IV.

FACTS COMMON TO ALL COUNTS

10. Congress enacted the National Flood Insurance Act in 1968 "in response to a growing concern that the private insurance industry was unable to offer reasonably priced flood insurance on a national basis." *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 387 (9th Cir. 2000). NFIP is a federally-subsidized program designed to make affordable flood insurance available to the general public in flood prone areas. See, *Gowland v. Aetna*, 143 F.3d 951, 953 (5th Cir. 1998). Numerous reasons make it uneconomical for private insurance companies, by themselves, to provide flood insurance with reasonable terms and conditions; therefore, Congress authorized the creation of the NFIP "with large-scale participation of the Federal Government ....". 42 U.S.C. § 4001(b); 4011(a).

11. Soon thereafter, Congress passed the Flood Disaster Protection Act of 1973, which required property owners to obtain flood insurance coverage on property located in federally designated special flood hazard areas in order to qualify for certain assistance or

financing. See 42 § U.S.C. 4012a; *Hofstetter v. Chase Home Fin., LLC*, 2010 U.S. Dist. LEXIS 84050, 2010 WL 3259773, at *4 (N.D. Cal. Aug. 16, 2010). Federally regulated private lenders were prohibited from making a loan secured by property located in a designated special flood hazard area unless flood insurance was obtained. 42 U.S.C. 4012a(b)(1).

12. Congress later enacted the National Flood Insurance Reform Act of 1994, which imposed further obligations regarding mandatory flood insurance requirements. The Act authorized federally regulated mortgage lenders and servicers to purchase flood insurance for property in special flood hazard areas when borrowers with loans secured by such property failed to purchase the minimum amount of flood insurance required under 42 U.S.C. 4012a(b). Prior to purchasing such insurance, the borrower was required to be given proper notice and an opportunity to purchase insurance for him or herself. 42 U.S.C. 4012a(e). The amount of insurance required was "at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less." 42 U.S.C. 4012a(b)(1)(A).

13. Today, the DHS's FEMA administers the program by developing flood hazard maps that are used to set flood insurance rates, regulate floodplain development, and inform those who live in the "100-year" floodplain of potential flood hazards.

14. The recent flooding in Colorado, which has claimed the lives of at least 8 people and damaged more than 19,000 homes, is a stark reminder that flood risk throughout the United States is prevalent, costly, and lethal. It is not confined to the Gulf Coast or any

coast for that matter; we find it in every state of the union.

15. FEMA has begun the process of increasing insurance rates on hundreds of thousands of homeowners and small business owners across the United States as a result of BW-12.

16. Implementation of the Act is causing extreme increases in Mississippi's flood insurance rates. Some premiums may increase drastically according to the FEMA Administrator's September 18, 2013 testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate. See Exhibit A (Written testimony of FEMA Administrator and NFIP Admistrator Craig Fugate before the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy hearing titled "Implementation of the Biggert-Waters Flood Insurance Reform Act of 2012: One Year After Enactment"). Mr. Fugate agreed that BW-12 raises affordability issues, but said in response to questioning that his hands are tied. "Let me put my cards on the table, I need your help. I have not found, my attorneys have not found a way ... I do not have the answer you are looking for. I need your help. Without additional legislative support ... I cannot address it," Fugate said. He also said that the affordability study mandated by BW-12 to be delivered to Congress approximately 6 months ago is unlikely to be completed until 2015, but that, in his opinion, the law does not tie the implementation of the reforms to the completion of the study.

17. It is pertinent that the Act implements a strategy for remapping the country's flood zones, and that the remapping appears to have started with Mississippi. According to FEMA, Mississippi and Louisiana are the first states to include the post Katrina statistics in their rating methodology. See Exhibit B (FEMA Map Showing Progress of Flood Mapping in

Coastal Counties of the United States). This means that Mississippi's citizens will be among the first in the nation to have these drastic rate increases imposed, and that Mississippi's citizens will pay them for many years before citizens of other states are required to do likewise.

18. BW-12 authorizes immediate rate increases on homeowners and businesses that played by the rules and did everything asked of them, before even beginning to study the impacts these rate increases would have on affordability. This was major legislation that passed without the information necessary to implement it with either compassion or common sense. Approximately 17.4 million households live in Special Flood Hazard Areas (SFHA) where flood insurance is mandatory. According to the Department of Housing and Urban Development ("HUD"), 41 percent of those households are low-to-median income and could face major difficulties affording rate increases. Those who are already in the program may be forced out, and families considering a first-time home purchase may suddenly find themselves priced out of the market.

19. The very first provision in the NFIP is the following Congressional finding and declaration of purpose:

> (a) Necessity and reasons for flood insurance program. The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation's resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and

> experience is appraised, thus eventually ***making flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.***

42 USCS § 4001(a) (emphasis added). Consequently, the over-arching purpose of NFIP is to provide ***affordable*** flood insurance in high-risk areas.

20. Notwithstanding the congressional purpose enunciated in 42 USCS § 4001(a), the only reference to "affordability" in BW-12 appears in 112 PL 141 § 100236, which mandates the "affordability study" Administrator Fugate referenced in his September 18, 2013 testimony. That section reads:

> Sec. 100236. STUDY OF PARTICIPATION AND **AFFORDABILITY FOR CERTAIN POLICYHOLDERS.**
>
> (a) FEMA Study.--The Administrator shall conduct a study of--
>
> (1) methods to encourage and maintain participation in the National Flood Insurance Program;
>
> (2) methods to educate consumers about the National Flood Insurance Program and the flood risk associated with their property;
>
> (3) ***methods for establishing an affordability framework for the National Flood Insurance Program, including methods to aid individuals to afford risk-based premiums under the National Flood Insurance Program through targeted assistance rather than generally subsidized rates, including means-tested vouchers***; (emphasis added) and
>
> (4) the implications for the National Flood Insurance Program and the Federal budget of using each such method.
>
> (b) National Academy of Sciences Economic Analysis.--To inform the Administrator in the conduct of the study under subsection (a), *the Administrator shall enter into a contract under which the National Academy of Sciences, in consultation with the Comptroller General of the United States, shall conduct and submit to the Administrator* ***an economic***

analysis of the costs and benefits to the Federal Government of a flood insurance program with full risk-based premiums, combined with means-tested Federal assistance to aid individuals who cannot afford coverage, through an insurance voucher program. The analysis shall compare the costs of a program of risk-based rates and means-tested assistance to the current system of subsidized flood insurance rates and federally funded disaster relief for people without coverage.

> (c) Report.--***Not later than 270 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains the results of the study and analysis under this section.***

> (d) Funding.--Notwithstanding section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), there shall be available to the Administrator from the National Flood Insurance Fund, of amounts not otherwise obligated, not more than $ 750,000 to carry out this section.

(emphasis added).

112 PL 141, § 100236.

21. As may be seen, 112 PL 141, § 100236 expressly mandated FEMA to contract for and obtain ***a specific affordability study that was to take 9-months, cost not more than $750,000 and be delivered to Congress by April of 2013.*** Instead, FEMA reportedly did not sign a contract to begin the study until August, 2013- four months after it was due. Indeed, in his September 18, 2013 written testimony, Administrator Fugate candidly admitted:

> Pursuant to the provisions in Biggert-Waters, FEMA is charged with completing a study with the National Academy of Sciences to explore ways to: encourage/maintain participation in the NFIP, methods to educate consumers about the NFIP and flood risk, and methods for establishing an affordability framework for the NFIP, including implications of affordability programs for the NFIP and the Federal budget. The Academy estimates that ***it will likely take at least two years to complete the study due to the need to obtain data on policy-***

holders and their incomes.

Ex. A (emphasis added).

22. In addition to 42 USC § 4001(a), supra, there are at least the following other portions of the NFIP which relate to and support the same "affordability" objective:

a. 42 USC § 4014(a)(2) requires as part of FEMA's estimation of premium rates to include consideration of rates which "would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this chapter." It should be noted that BW-12 § 205 amends this section to remove certain properties from inclusion in the subsidy program;

b. 42 USC § 4015(a)(1) grants FEMA the discretion to set "chargeable premium rates" at "less than the estimated risk premium rates under section 4014(a)(1) of this title, where necessary."

c. 42 USC § 4015(b) describes what FEMA must consider in setting the chargeable rates, and paragraph (b)(2) of this section requires that the rate be "adequate on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this chapter."

23. Other studies are outstanding. For example, 112 PL 141 §100231, reads:

§ 100231. STUDIES AND REPORTS.

(a) Report on Improving the National Flood Insurance Program.--***Not later than 1***

year after the date of enactment of this Act,(emphasis added) the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on--

(1) the number of flood insurance policy holders currently insuring--

(A) a residential structure up to the maximum available coverage amount, as established in section 61.6 of title 44, Code of Federal Regulations, of--

(i) $ 250,000 for the structure; and

(ii) $ 100,000 for the contents of such structure; or

(B) a commercial structure up to the maximum available coverage amount, as established in section 61.6 of title 44, Code of Federal Regulations, of $ 500,000;

(2) the increased losses the National Flood Insurance Program would have sustained during the 2004 and 2005 hurricane [950] season if the National Flood Insurance Program had insured all policyholders up to the maximum conforming loan limit for fiscal year 2006 of $ 417,000, as established under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2));

(3) the availability in the private marketplace of flood insurance coverage in amounts that exceed the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations; and

(4) what effect, if any--

(A) raising the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations, would have on the ability of private insurers to continue providing flood insurance coverage; and

(B) reducing the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations, would have on the ability of private insurers to provide sufficient flood insurance coverage to effectively replace the current level of flood insurance coverage being provided under the National Flood Insurance Program.

(b) 42 USC 4027a Report of the Administrator on Activities Under the National Flood Insurance Program.--

(1) In general.-- The Administrator shall, on an annual basis, submit a full report on the operations, activities, budget, receipts, and expenditures of the National Flood Insurance Program for the preceding 12-month period to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) Timing.-- Each report required under paragraph (1) shall be submitted to the committees described in paragraph (1) not later than 3 months following the end of each fiscal year.

(3) Contents.-- Each report required under paragraph (1) shall include--

(A) the current financial condition and income statement of the National Flood Insurance Fund established under section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), including--

(i) premiums paid into such Fund;

(ii) policy claims against such Fund; and

(iii) expenses in administering such Fund;

(B) the number and face value of all policies issued under the National Flood Insurance Program that are in force;

(C) a description and summary of the losses attributable to repetitive loss structures;

(D) a description and summary of all losses incurred by the National Flood Insurance Program due to--

(i) hurricane related damage; and

(ii) nonhurricane related damage;

(E) the amounts made available by the Administrator for mitigation assistance under section 1366(c)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(c)(4)), as so redesignated by this Act, for the purchase of properties substantially damaged by flood for that fiscal year, and the actual number of flood damaged properties purchased and the total cost expended to purchase such properties;

(F) the estimate of the Administrator as to the average historical loss year, and the basis for that estimate;

(G) the estimate of the Administrator as to the maximum amount of claims that the National Flood Insurance Program would have to expend in the event of a catastrophic year;

(H) the average--

(i) amount of insurance carried per flood insurance policy;

(ii) premium per flood insurance policy; and

(iii) loss per flood insurance policy; and

(I) the number of claims involving damages in excess of the maximum amount of flood insurance available under the National Flood Insurance Program and the sum of the amount of all damages in excess of such amount.

(c) GAO Study on Pre-FIRM Structures.--***Not later than 1 year after the date of enactment of this Act***, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the--

(1) composition of the remaining pre-FIRM structures that are explicitly receiving discounted premium rates under section 1307 of the National Flood Insurance Act of 1968 (42 U.S.C. 4014), including the historical basis for the receipt of such subsidy and the extent to which pre-FIRM structures are currently owned by the same owners of the property at the time of the original National Flood Insurance Program rate map;

(2) number and fair market value of such structures;

(3) respective income level of the owners of such structures;

(4) number of times each such structure has been sold since 1968, including specific dates, sales price, and any other information the Secretary determines appropriate;

(5) total losses incurred by such structures since the establishment of the National Flood Insurance Program compared to the total losses incurred by all structures that are charged a nondiscounted premium rate;

(6) total cost of foregone premiums since the establishment of the National Flood Insurance Program, as a result of the subsidies provided to such structures;

(7) annual cost as a result of the subsidies provided to such structures;

(8) the premium income collected and the losses incurred by the National Flood Insurance Program as a result of such explicitly subsidized structures compared to the premium income collected and the losses incurred by such Program as a result of structures that are charged a nondiscounted premium rate, on a State-by-State basis; and

(9) the options for eliminating the subsidy to such structures.

(d) GAO Review of FEMA Contractors.--The Comptroller General of the United States, in conjunction with the Office of the Inspector General of the Department of Homeland Security, shall--

(1) conduct a review of the 3 largest contractors the Administrator uses in administering the National Flood Insurance Program; and

(2) ***not later than 18 months after the date of enactment of this Act***,(emphasis added) submit a report on the findings of such review to the Administrator, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(e) Study and Report on Graduated Risk.--

(1) Study.----

(A) Study required.--The Administrator shall enter into a contract under which the National Academy of Sciences shall conduct a study exploring methods for understanding graduated risk behind levees and the associated land development, insurance, and risk communication dimensions.

(B) Contents of study.--The study under this paragraph shall--

(i) research, review, and recommend current best practices for estimating direct annualized flood losses behind levees for residential and commercial structures;

(ii) rank each best practice recommended under clause (i) based on the best value, balancing cost, scientific integrity, and the inherent uncertainties associated with all aspects of the loss estimate, including geotechnical engineering, flood frequency estimates, economic value, and direct damages;

(iii) research, review, and identify current best floodplain management and land use practices behind levees that effectively balance social, economic, and environmental considerations as part of an overall flood risk management strategy;

(iv) identify areas in which the best floodplain management and land use practices described in clause (iii) have proven effective and recommend methods and processes by which such practices could be applied more broadly across the United States, given the variety of different flood risks, State and local legal frameworks, and evolving judicial opinions;

(v) research, review, and identify a variety of flood insurance pricing options for flood hazards behind levees that are actuarially sound and based on the flood risk data developed using the 3 best practices recommended under clause (i) that have the best value as determined under clause (ii);

(vi) evaluate and recommend methods to reduce insurance costs through creative arrangements between insureds and insurers while keeping a clear accounting of how much financial risk is being borne by various parties such that the entire risk is accounted for, including establishment of explicit limits on disaster aid or other assistance in the event of a flood; and

(vii) taking into consideration the recommendations under clauses (i) through (iii), recommend approaches to communicate the associated risks to [953] community officials, homeowners, and other residents of communities.

(2) Report.-- *The contract under paragraph (1)(A) shall provide that* ***not later than 12 months after the date of enactment of this Act,*** *the National Academy of Sciences shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Science, Space, and Technology of the House of Representatives a report on the study under paragraph (1) that includes the information and recommendations required under paragraph (1).*

(Emphasis added).

24. The Report required by 112 PL 141 § 100231(c) entitled "FLOOD INSURANCE-More Information Needed on Subsidized Properties" was issued by the United States Government

Accounting Office in July 2013. A true and correct copy of this report is attached as Exhibit C. Exhibit C appears to be the only report mandated by BW-12 which has been completed to date. Its observations and conclusions include the following:

a. "The Biggert-Waters Act will likely require several years for FEMA to fully implement. ***FEMA officials acknowledged that they have data limitations and other issues to resolve before eliminating some subsidies.*** We projected that subsidies on most of the policies required to be eliminated by the act could be identified in FEMA's data; however data limitations make implementation of some provisions of the act more difficult. For example, the act eliminated subsidies for residential policies that covered nonprimary residences. ***FEMA has data on whether a policy covers a primary residence but officials stated that it may be outdated or incorrect....***" Id., p.16. (Emphasis added).

b. The act also eliminated subsidies for business policies. However, FEMA categorizes policies as residential and nonresidential rather than residential and business. As a result, ***FEMA does not have the information to identify nonresidential properties, such as schools or churches that are not businesses and continue to qualify for a subsidy.***" Id. (Emphasis added).

c. "Beginning in October 2013, FEMA will require applicants to provide residential and business status for new policies and renewals. Additionally, the act states that subsidies will be eliminated for policies that have received cumulative payment amounts for flood-related damage that equaled or exceeded the fair market value of the property, and for policies that experience damage exceeding 50 percent of the fair market value of the property after enactment. ***Currently, FEMA is unable to make this determination as it does not maintain data on the fair market value of properties insured by subsidized policies. FEMA officials said that they are in the process of identifying a data source.*** " Id., p.16. (Emphasis added).

d. ***"FEMA also does not have information on the flood risk of properties with previously subsidized rates, which is needed to establish full-risk rates for these properties going forward..*** " Id., p. 27. (Emphasis added).

e. ***"FEMA does not have sufficient data to estimate the aggregate cost of subsidies.*** " Id. (Emphasis added).

f. ***"FEMA generally lacks information to establish full-risk rates that reflect flood risk for active policies that no longer qualify for subsidies as a result of the Biggert-Waters Act and also lacks a plan for proactively obtaining such information."*** Id.,p. 30 (Emphasis added).

g. ***"FEMA does not have key information used in determining full-risk rates from all policyholders.*** " Id. (Emphasis added).

h. "Although subsidized policies have been identified as a risk to the program because of the financial drain they represent, ***FEMA does not have a plan to expeditiously and proactively obtain the information needed to set full-risk rates for all of them.*** " Id., at 32. (Emphasis added).

i. "Without a plan to expeditiously obtain property-level elevation information, FEMA will continue to lack basic information needed to accurately determine flood risk and will continue to base full-risk rate increases for previously subsidized policies on limited estimates. As a result, ***FEMA's phased-in rates for previously subsidized policies still may not reflect a property's full risk of flooding, with some policyholders paying premiums that are below and others paying premiums that exceed full-risk rates.*** Id. (Emphasis added).

j. However, "...***eliminating or reducing subsidized policies could have unintended consequences, such as increasing premium rates to the point that flood insurance is no longer affordable for some policyholders and potential declines in program participation.***" Id., p. 33. (Emphasis added).

k. "Although accelerating the elimination of subsidies could strengthen the financial solvency of the program, it also entails trade-offs and unintended consequences. For example according to FEMA estimates, ***the elimination of subsidies for pre-FIRM properties would on average more than double these policyholders' premium rates, raising concerns about the affordability of the coverage and participation in the program. Higher premium rates might result in reduced participation in NFIP over time as people either decide to drop their policies or are priced out of the market according to FEMA officials and insurance industry stakeholders we interviewed. The 1999 PwC study estimated that, for communities most likely to experience a decrease in property values if subsidies were immediately eliminated, on average 50% of policyholders might cancel their coverage. It is too soon to tell the long-term impacts of the elimination of subsidies that went into effect in 2013.*** Even reducing, rather than eliminating, subsidies could increase the financial burden on some existing policyholders—particularly low-income policyholders—and could lead to some of them deciding to leave the program. As a result, ***if owners of pre-FIRM properties, which have relatively high flood losses, cancelled their insurance policies, the federal government—and ultimately taxpayers—could face increased costs in the form of FEMA disaster assistance grants to these individuals.***" Id., p. 34. (Emphasis added).

1. In particular, the ASFPM paper states,"....assistance will be necessary for some policyholders to help them transition to either full-risk rates, or to mitigate their properties, otherwise some property owners might not be able to afford to remain in their homes....According to FEMA officials, as of May 31, 2013, FEMA has consulted with the National Academy of Sciences ***about determining how to undertake this study***." *Id.*, p. 36. (Emphasis added).

25. There are even more examples of BW-12 mandated study and reporting requirements which have not been complied with. For example, 112 PL 141 §100221 provides:

> §100221. INTERAGENCY COORDINATION STUDY.
>
> (a) In General.--The Administrator shall enter into a contract with the National Academy of Public Administration to conduct a study on how the Federal Emergency Management Agency--
>
> (1) should improve interagency and intergovernmental coordination on flood mapping, including a funding strategy to leverage and coordinate budgets and expenditures; and
>
> (2) can establish joint funding mechanisms with other Federal agencies and units of State and local government to share the collection and utilization of data among all governmental users.
>
> (b) Timing.--A contract entered into under subsection (a) shall require that, ***not later than 180 days after the date of enactment of this subtitle***, the National Academy of Public Administration shall report the findings of the study required

under subsection (a) to--

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) the Committee on Financial Services of the House of Representatives;

(3) the Committee on Appropriations of the Senate; and

(4) the Committee on Appropriations of the House of Representatives.

(Emphasis added).

Additionally, 112 PL 141 § 100233, reads:

> § 100233. GAO STUDY ON BUSINESS INTERRUPTION AND ADDITIONAL LIVING EXPENSES COVERAGES.
>
> (a) Study.--The Comptroller General of the United States shall conduct a study concerning--
>
> (1) the availability of additional living expenses and business interruption coverage in the private marketplace for flood insurance;
>
> (2) the feasibility of allowing the National Flood Insurance Program to offer such coverage at the option of the consumer;
>
> (3) the estimated cost to consumers if the National Flood Insurance Program priced such optional coverage at true actuarial rates;
>
> (4) the impact such optional coverage would have on consumer participation in the National Flood Insurance Program; and
>
> (5) the fiscal impact such optional coverage would have upon the National Flood Insurance Fund if such optional coverage were included in the National Flood Insurance Program, as described in paragraph (2), at the price described in paragraph (3).
>
> (b) Report.--***Not later than 1 year after the date of enactment of this Act***, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing the results of the study under subsection (a).

The FEMA Administrator should have the benefit of these impact studies before acting.

Additionally, 112 PL 141 § 100234, reads:

> Sec. 100235. REPORT ON INCLUSION OF BUILDING CODES IN FLOODPLAIN MANAGEMENT CRITERIA.
>
> ***Not later than 6 months after the date of enactment of this Act,*** the Administrator of the Federal Emergency Management Agency shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the impact, effectiveness, and feasibility of amending section 1361 of the National Flood Insurance Act of 1968 (42 U.S.C. 4102) to include widely used and nationally recognized building codes as part of the floodplain management criteria developed under such section, and shall determine--
>
> (1) the regulatory, financial, and economic impacts of such a building code requirement on homeowners, States and local communities, local land use policies, and the Federal Emergency Management Agency;
>
> (2) the resources required of State and local communities to administer and enforce such a building code requirement;
>
> (3) the effectiveness of such a building code requirement in reducing flood-related damage to buildings and contents;
>
> (4) the impact of such a building code requirement on the actuarial soundness of the National Flood Insurance Program;
>
> (5) the effectiveness of nationally recognized codes in allowing innovative materials and systems for flood-resistant construction;
>
> (6) the feasibility and effectiveness of providing an incentive in lower premium rates for flood insurance coverage under such Act for structures meeting whichever of such widely used and nationally recognized building codes or any applicable local building codes provides greater protection from flood damage;
>
> (7) the impact of such a building code requirement on rural communities with different building code challenges than urban communities; and
>
> (8) the impact of such a building code requirement on Indian reservations. (Emphasis added).

The building codes and their impact are a critical aspect of the success of the NFIP, and the FEMA Administrator should have the benefit of the information in this study to make his decisions.

26. Any attempt by FEMA to proceed with flood insurance rate increases and substantial changes in coverage under the NFIP without first obtaining these studies mandated 112 PL 141 § 100236, 112 PL 141 § 100231, 112 PL 141 § 100233, and 112 PL 141 § 100234 and thereafter analyzing the results is "arbitrary and capricious", i.e. they are proceeding without consideration of much of the relevant necessary evidence which Congress has expressly identified and directed FEMA and Comptroller of the Currency and others to furnish to Congress sufficiently in advance of October 1, 2013 to make necessary changes and corrections in 112 PL 141. There is a clear mandate on FEMA in NFIP to ensure that rates are "reasonable" such that it will "encourage prospective insureds to purchase the insurance," which is plainly disregarded by proceeding without such studies and information.

27. State insurance regulators, including but not limited to, the Plaintiff, members of Congress and citizens in states from communities along the Gulf Coast, joined by officials and NFIP customers from Florida to Vermont share the views of Louisiana's Senators, are voicing deep concern about the affordability issue. They fear rate increases of up to 3,000 percent as mandated by the law will force people to give up their homes.

28. Another particularly devastating problem for the Mississippi homeowners is that, following Katrina, many rebuilt their homes to the proper flood elevations (and many

built over that level) based on FEMA's Advisory Base Flood Elevation Rate Maps available to them at that time. Unfortunately, FEMA's subsequent remapping of the area resulted in significant increases to the Base Flood Elevation (BFE) level, such that homes thought to have been built well over the BFE are now several feet below that level. Drastic rate increases reflecting the BFE changes are beginning to be seen now. These are people that did nothing wrong; they simply built to the standards that were available to them. Now their rates are going up based on changes to the standard, and FEMA has not properly compiled the studies necessary to properly assess the economic impact and affordability of what they are setting as "full-risk rates".

V.

COUNT I CLAIM UNDER THE DECLARATORY JUDGMENT ACT

29. Section 2201 of Title 28 of the United States Code provides that:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516a(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a).

30. The Department seeks a declaration of the rights and other legal relations between FEMA and the citizens of the State of Mississippi which it represents with respect to the issues presented relating to the NFIP fee increase and other issues relating to BW-12. At a

minimum, Plaintiff seeks a declaration that:

a. FEMA does not yet have the information that is required in order to make rating decisions and will not have such information until the mandated studies (including those addressing the key issue of "affordability") are obtained and meaningfully reviewed by FEMA;

b. That the draconian and unaffordable rates that were pushed out beginning October 1, 2013, are not on "reasonable terms" and therefore, contrary to the Congressionally stated intent behind the NFIP;

c. That BW-12 specifically required that many of the mandated studies be performed within a specific timeline which would have made the results of the studies available in rate determinations which have instead been made by FEMA in the absence of any such studies;

d. Since FEMA failed to meet the mandated timelines, the results of the studies are not, and have not been, available for FEMA's consideration in its present rate determinations; and

e. FEMA should not be allowed to move forward with respect to matters scheduled by BW-12 to take place on and after October 1, 2013, without having first complied with previous BW-12 mandatory deadlines which FEMA has not yet complied with.

31. A substantial controversy exists between the Parties who have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment defining the rights and obligations of the parties and in anticipation of future conduct as

described in this Complaint.

32. A declaratory judgment will settle the controversy, serve a useful purpose in clarifying the legal relations at issue, is not being used for the purpose of any sort of procedure or fencing, does not involve any sort of friction between federal or state courts and will not improperly encroach upon state jurisdiction and there is no alternative remedy which is better or more effective under the circumstances.

VI.

COUNT II - CLAIM FOR INJUNCTIVE RELIEF UNDER THE ADMINISTRATIVE PROCEDURES ACT

33. Plaintiff incorporates by reference allegations set forth in all preceding paragraphs above as if fully set forth herein in support of Count II of this Complaint.

34. The APA authorizes suit by "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 7021, et seq. "[A]gency action" is defined in § 551(13) to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, *or failure to act.*" (Emphasis added.) The APA provides relief for a failure to act in § 706(1): "The reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed."

35. Sections 702, 704, and 706(1) all insist upon an "agency action," either as the action complained of (in §§ 702 and 704) or as the action to be compelled (in § 706(1)). The definition of that term begins with a list of five categories of decisions made or outcomes

implemented by an agency–"agency rule, order, license, sanction [or] relief." § 551(13). All of those categories involve circumscribed, discrete agency actions, as their definitions make clear: "an agency statement of . . . future effect designed to implement, interpret, or prescribe law or policy" (rule); "a final disposition . . . in a matter other than rule making" (order); a "permit . . . or other form of permission" (license); a "prohibition . . . or taking [of] other compulsory or restrictive action" (sanction); or a "grant of money, assistance, license, authority," etc., or "recognition of a claim, right, immunity," etc., or "taking of other action on the application or petition of, and beneficial to, a person" (relief). §§ 551(4), (6), (8), (10), (11).

36. The terms following those five categories of agency action are not defined in the APA: "or the equivalent or denial thereof, or failure to act." § 551(13). The final term in the definition, "failure to act," is properly understood as a failure to take an agency action--that is, a failure to take one of the agency actions (including their equivalents) earlier defined in § 551(13). A "failure to act" is not the same thing as a "denial." The latter is the agency's act of saying no to a request; the former is simply the omission of an action without formally rejecting a request--for example, the failure to promulgate a rule or make some decision by a statutory deadline. The important point is that a "failure to act" is properly understood to be limited, as are the other items in § 551(13), to a discrete action. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 63, 124 S. Ct. 2373, 159 L. Ed. 2d 137 (U.S. 2004).

37. A second point central to the analysis of the present case is that the only agency action that can be compelled under the APA is action legally required. This limitation appears in

§ 706(1)'s authorization for courts to "compel agency action unlawfully withheld." In this regard the APA carried forward the traditional practice prior to its passage, when judicial review was achieved through use of the so-called prerogative writs--principally writs of mandamus under the All Writs Act, now codified at 28 U.S.C. § 1651(a). *Norton,* 542 U.S. at 63. Thus, a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take. *Id.*, at 64.

38. The limitation to required agency action rules out judicial direction of even discrete agency action that is not demanded by law (which includes, of course, agency regulations that have the force of law). Thus, when an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be. For example, in *Norton*, the Supreme Court cited by way of example 47 U.S.C. § 251(d)(1), which required the Federal Communications Commission "to establish regulations to implement" interconnection requirements "[w]ithin 6 months" of the date of enactment of the Telecommunications Act of 1996, and noted that this "would have supported a judicial decree under the APA requiring the prompt issuance of regulations, but not a judicial decree setting forth the content of those regulations." *Id.*, at 65.

39. FEMA was similarly obligated to obtain and present to Congress within 9 months after passage of BW-12, the "affordability" report mandated by 112 PL 141 § 100236, which is just like the obligation imposed upon the FCC under 47 U.S.C. § 251(d)(1). FEMA was further obligated to deliver that report in April of 2013, so that Congress would have an opportunity to study that report for at least 6 months before the rate increases took

effect beginning on and after October 1, 2013. Additionally, FEMA was unambiguously mandated to enter into other contracts and obtain other studies and information from various third parties not later than the first anniversary of the passage of BW-12, which FEMA likewise failed to comply with.

40. Federal Courts are familiar with and regularly entertain challenges to Federal Agencies which take action without first receiving the results of required studies. Though deferential, judicial review under the APA is designed to "ensure that the agency considered all of the relevant factors and that its decision contained no clear error of judgment." *Arizona v. Thomas*, 824 F.2d 745, 748 (9th Cir. 1987) (internal citation and quotation omitted). "The deference accorded an agency's scientific or technical expertise is not unlimited." *Brower v. Evans*, 257 F.3d 1058, 1067 (9th Cir. 2001). An agency's decision is arbitrary and capricious if it has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983); see also Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416, 91 S. Ct. 814, 28 L. Ed. 2d 136 (1971) (reviewing court may overturn an agency's action as arbitrary and capricious if the agency failed to consider relevant factors, failed to base its decision on those factors, and/or made a "clear error of judgment"), overruled on other grounds by *Califano v. Sanders*, 430 U.S. 99, 105, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977).

41. FEMA's failure to timely comply with 112 PL 141 § 100236's mandate and the other mandatory obligations imposed during the first year after the passage of BW-12 are multiple discrete agency inactions or failures to act which mandate a judicial decree under the APA requiring FEMA to deliver the required reports to Congress and enter into the various contracts and consulting relationships with third parties all before any rate increases are implemented.

42. This Court should enjoin the October 1, 2013 NFIP rate increases until such time as FEMA complied with each and every one of the mandatory obligations and deadlines in BW-12 preceding those mandated to occur on or after October 1, 2013.

VII.

COUNT III REQUEST FOR STAY PURSUANT TO 5 USC § 705 OR ALTERNATIVELY REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF

43. Plaintiff incorporates by reference allegations set forth in all preceding paragraphs above as if fully set forth herein in support of Count III of this Complaint.

44. According to 5 USC § 705:

> When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

The Plaintiff is entitled to relief in the form of postponement or abatement of the phase-out of premium subsidies to preserve the status and rights of, and to prevent irreparable injury to, the people of Mississippi, and NFIP policyholders. Alternatively, the plaintiff is entitled to a preliminary injunction which should function to prohibit the defendants from implementing the phase-out of premium subsidies, or to the extent such phase-out has already begun, then to enjoin them from any further implementation of any "subsidy phase-out" or rate increase.

A preliminary injunction is an extraordinary remedy that should only issue if the movant shows: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) the injunction will not disserve the public interest.

45. Plaintiff has a substantial likelihood of prevailing on the merits because:

a. 112 PL 141 §100236 and the other deadline driven requirements under BW-12 are grants of authority that FEMA has no discretion whether or not to exercise because the various provisions of the statute are all phrased in mandatory rather than discretionary language. See, *La Union Del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, 608 F.3d 217, 220 (5th Cir. 2010)(finding similar obligation on FEMA to promulgate regulations pursuant to Federal Assistance to Individuals and Households and codified at 42 U.S.C. § 5174(j)[1]). Unlike the situation in *La Union Del Pueblo Entero,* where FEMA had promulgated certain mandatory regulations which the Plaintiff contended did not elaborate with

[1] That code section reads: "The President *shall* prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance." 42 USCS § 5174 (emphasis added).

sufficient specificity certain statutory requirements, FEMA, in the present case, completely failed to comply with Congress's instructions or time tables to procure certain studies in advance of the NFIP rate increases. 112 PL 141 § 100236, just like 42 U.S.C. § 5174(j), is phrased in mandatory language rather than permissive or discretionary language. Subparagraph (a) states that "The Administrator *shall* conduct a study...." (Emphasis added). Subparagraph (b) similarly states that: "[t]o inform the [FEMA] Administrator in the conduct of the study under subsection (a), the Administrator *shall* enter into a contract under which the National Academy of Sciences, in consultation with the Comptroller General of the United States, *shall conduct and submit to the Administrator* an economic analysis of the costs and benefits to the Federal Government of a flood insurance program with full risk-based premiums, combined with means-tested Federal assistance to aid individuals who cannot afford coverage, through an insurance voucher program. The analysis *shall* compare the costs of a program of risk-based rates and means-tested assistance to the current system of subsidized flood insurance rates and federally funded disaster relief for people without coverage." Subsection (c) further mandates that "[n]ot later than 270 days after the date of enactment of this Act, the Administrator *shall* submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains the results of the study and analysis under this section." (Emphasis added). Because this Court cannot presume that 112 PL 141 §100236's repeated use of the word "shall" when imposing obligations on the part of the FEMA administrator to act within specified deadlines after the enactment of the Act is meaningless, this section necessarily imposes an obligation on FEMA to; (a) conduct a study, (b) by contracting with the National Academy of Sciences, in consultation with the Comptroller General of the United States, (c) to produce an economic analysis of the costs and benefits to the Federal Government of a flood insurance program *with full risk-based premiums, combined with means-tested Federal assistance to aid individuals who cannot afford coverage, through an insurance voucher program* and *comparing the costs of a program of risk-based rates and means-tested assistance to the current system of subsidized flood insurance rates and federally funded disaster relief for people without coverage* (d) and "[n]ot later than 270 days after the date of enactment of this Act, to submit a report that contains the results of the study and analysis under this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives." The other provisions of BW-12 cited and discussed previously all contain "shall" as mandatory language which FEMA has not complied with.

46. A substantial threat of irreparable injury exists if the injunction is not granted in the form of the eminent drastic increases in NFIP insurance premiums which will otherwise go into effect from and after October 1, 2013 because:

a. Mississippi and Louisiana appear to be the only states in which FEMA has completed updated Flood Insurance Rate Mapping, so Mississippi citizens will have substantially higher premiums than those charged in other states which have yet to initiate or complete the process of updating Flood Insurance Rate Mapping. As a result, the citizens of Mississippi with flood insurance will be among the first NFIP insureds to bear the brunt of FEMA anticipated drastic rate increases.

b. The Flood Disaster Protection Act of 1973 requires that individuals, businesses, and others buying, building, or improving property located or to be located in identified areas of special flood hazards within NFIP participating communities are required to purchase flood insurance as a prerequisite for receiving any type of direct or indirect Federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance. If flood insurance becomes unaffordable as the result of FEMA's failure to comply with NFIP's "affordability" mandate, which has not been repealed or changed by BW-12, Mississippi will increasingly become ineligible for direct or indirect Federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance.

c. The NFIP was simultaneously amended to prohibit federally regulated lending institutions from making any real estate loans in a special flood hazard area unless the property was covered by flood insurance. 42 U.S.C. § 4012a(b). Lenders were authorized to charge borrowers a "reasonable fee" to cover the initial determination whether a home is in a special flood hazard area, and subsequent "life-of-loan monitoring." 12 C.F.R. § 339.8(a). When property is in such an area, the lender must notify the borrower of the requirement to have flood insurance. 42 U.S.C. § 4012a(e)(1). If the borrower fails to buy such insurance within forty-five days of being notified, the lender is required to buy it for the borrower and charge the costs back to the borrower. Id. § 4012a(e)(2). This practice is commonly known as "forced placement" of flood insurance. A lender may not simply ignore this requirement because a lender that has a "pattern or practice" of violating the requirements of this section shall be assessed civil penalties "by the appropriate Federal entity." Id. § 4012a(f)(1)--(2); see also id. § 4104a(1) (providing that "[e]ach Federal entity for lending regulation . . . shall by regulation require regulated lending institutions" to give advance notice of the flood insurance requirement before closing on the loan); 12 C.F.R. § 339.3 (prohibiting federally insured state banks from making loans in special flood hazard areas unless the property is covered by flood insurance). Among other things, BW-12 eliminated the $100,000 cap on the total amount of penalties which could be assessed against any single regulated lending institution during any calendar year, so that the penalty amount which may be assessed against any single lender is now unlimited. These laws mandate that all federally insured lenders in Mississippi must obtain NFIP flood insurance coverage even if the owner of a mortgaged structure is unwilling or unable to afford such coverage, or otherwise the lenders face unlimited penalties since the enactment of BW-12.

d. Finally, numerous residents of Mississippi applied for and received FEMA grants and other benefits in good faith following Hurricane Katrina conditioned in part upon their continued participation in NFIP. At the time that they did so, the NFIP rates were reasonable and were anticipated to remain so based on the stated purposes of the NFIP. If the cost of maintaining flood insurance rapidly escalates beyond the affordability of most Mississippi residents based on the requirements of BW-12, the recipients of such grants and other benefits may be subjected to adverse action by FEMA of which they have no practical control.

e. Certain Mississippi citizens are currently incorrectly required to obtain and maintain flood insurance as the result of erroneous flood maps promulgated by FEMA. The cost of doing so or pursuing individual remedies attempting to prove that their property is not properly subject to NFIP requirements is currently a financial burden but will shortly become an intolerable financial burden on such Mississippi citizens if FEMA is allowed to escalate flood insurance premiums as planned under BW -12.

47. The threatened injury outweighs any harm that will result to the non-movant if the injunction is granted because movant is simply seeking to compel FEMA to become compliant with the timing and mandates of Congress contained in BW-12 and the NFIP.

48. The injunction will serve the public interest because it seeks to require FEMA to take the steps which Congress determined and mandated to be in the public interest prior to any increase in NFIP rate increases, which FEMA failed to comply with.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands declaratory and injunctive relief of and from the Defendant, as follows:

1. A declaratory finding and judgment that FEMA was obligated to obtain and present to Congress within 9 months after passage of BW-12, the "affordability" report mandated by 112 PL 141 § 100236 by no later than April of 2013, so that Congress would have an opportunity to study that report for 6 months before the rate increases took effect beginning on and after October 1, 2013.
2. A declaratory finding and judgment that FEMA did not comply with the mandatory reporting requirements and deadlines imposed by 112 PL 141 § 100231 (except §100231(c)), 112 PL 141 § 100233, 112 PL 141 § 100234 and 112 PL 141 § 100236.
3. A declaratory finding and judgment that FEMA's failure to timely comply with the mandates 112 PL 141 § 100231, 112 PL 141 § 100233, 112 PL 141 § 100234 and 112 PL 141 § 100236 were discrete agency inactions or failures to act which mandate a judicial decree under the APA.
4. Injunctive relief requiring FEMA to deliver the § 100236 report to Congress at least 6 months before any rate increases are implemented;
5. A declaratory judgment finding that in addition to 42 USC § 4001(a), supra, FEMA was obligated to comply with at least the following other portions of the NFIP which support the same objective: 112 PL 141 § 100231, 112 PL 141 § 100233, and 112 PL 141 § 100234.
6. Injunctive relief precluding further implementation, and abatement, of the October 1, 2013 NFIP rate increases until such time as FEMA has fully and properly complied with the mandates of 112 PL 141 § 100231, 112 PL 141 § 100233, 112 PL 141 § 100234 and 112 PL 141 § 100236;

7. A stay pending judicial review pursuant to 5 U.S.C. § 705 as prayed for above, or preliminary injunctive relief consistent with the permanent injunctive relief requested above;

8. Such other relief as may be appropriate under the circumstances.

This the 7TH day of October, 2013

Respectfully submitted,

MISSISSIPPI INSURANCE DEPARTMENT,
by and through MICHAEL J. CHANEY,
COMMISSIONER OF INSURANCE FOR THE
STATE OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading with the Clerk of the Court using the ECF system which sent notification of same to the following:

All counsel of record registered with the ECF system.

This the 7th day of October, 2013.

/s/ K.C. Hightower
Balch & Bingham LLP
Of Counsel

Homeland Security

Written testimony of FEMA Administrator Craig Fugate for a Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy hearing titled "Implementation of the Biggert-Waters Flood Insurance Reform Act of 2012: One Year After Enactment"

Release Date: September 18, 2013

538 Dirksen Senate Office Building

Introduction

Good afternoon Chairman Merkley, Ranking Member Heller and distinguished Members of the Subcommittee. My name is Craig Fugate, and I am the Administrator at the U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). It is an honor to appear before you today on behalf of FEMA to discuss the National Flood Insurance Program (NFIP) and our efforts to implement the Biggert-Waters Flood Insurance Reform Act of 2012.

In my testimony today, I will discuss the NFIP; the changes FEMA is making as a result of the Act; the role of flood maps and levees; and steps property owners can take to mitigate against flood damage.

Flooding and the Need for a National Program

Flooding has been, and continues to be, a serious risk in the United States. Most insurance companies have historically excluded flood damage from homeowners insurance because of adverse selection -- only those most susceptible to flooding will purchase coverage. To address this need, Congress established the NFIP in 1968 to make flood insurance available, identify flood risks and encourage sound local flood risk management. The NFIP is administered by FEMA.

The NFIP was broadened and modified with the passage of the Flood Disaster Protection Act of 1973 and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004. The most recent reforms have come after numerous short-term reauthorizations and lapses in Program authority over the past several years.

About 40 percent of the U.S. population lives in counties that border the ocean or Great Lakes and are directly or indirectly affected by flood risk, and most U.S. counties contain rivers and streams that present flood hazards. Moreover 5.3 percent of the U.S. population lives in the highest risk coastal and riverine flood hazard areas, making flooding the most costly and prevalent natural risk in the United States. Additionally, sea level rise, climate change, urbanization and other factors may lead to even more Americans living in high flood risk areas in coming years.

The NFIP serves as the foundation for national efforts to reduce the loss of life and property from flood disasters that may occur. The Program is designed to insure against, as well as minimize or mitigate, the long-term risks to people and property from the effects of flooding, and to reduce the escalating cost of flooding to taxpayers. The NFIP works closely in partnership with Write Your Own (WYO) insurance companies to market, sell, administer and adjust claims for policyholders. By encouraging and supporting mitigation and floodplain management efforts, the NFIP is estimated to save the nation $1.6 billion annually in avoided flood losses.

Today, almost 22,000 communities in all states and territories participate in the NFIP, with 5.6 million NFIP policies providing over $1.2 trillion in coverage.

The NFIP was, by statute and design, not actuarially sound. Specifically, 20 percent of policyholders, including many of the NFIP's highest risk structures, paid premiums that were less than actuarially sound and the government was subsidizing on average 60 percent of the loss. The debt resulting from Hurricanes Katrina and Sandy, the two costliest storms in NFIP history, illustrate the financial challenges for the NFIP that the Biggert-Waters Flood Insurance Reform Act of 2012 aimed to address. Significant concentrated losses in high policy coverage areas could set the program up for future losses beyond the authorized borrowing authority. In addition, the financial challenges are heightened due to subsidies and grandfathering that were established to encourage older structures to participate in the Program and make premiums affordable for these policyholders in high risk areas.

Pursuant to the statute before the Biggert Waters Flood Insurance Reform Act of 2012, FEMA established subsidies for owners of existing homes and businesses built prior to the initial Flood Insurance Rate Map (FIRM) and made them eligible to purchase insurance at subsidized rates. In other words, a building built before flood risk was known, and at an elevation below the one-percent annual chance flood, could be insured at a rate substantially less than their real risk rate.

The NFIP collects more than $3.5 billion in annual premium revenue, and FEMA estimates that an additional $1.5 billion annually is needed from subsidized policyholders.

FEMA also established grandfathered rates to address rates for structures built in compliance with existing FIRMs that experienced subsequent increases in flood risk. FEMA allowed those structures to grandfather according to the risk identified on the earlier FIRM, and did not adjust premiums to reflect the current risk. Grandfathered properties are not subsidized by the Program, and FEMA establishes cross subsidies within classes of structures to maintain the actuarial integrity of the rate structure.

This annual premium shortfall during catastrophic flooding events, such as Hurricanes Katrina and Sandy, required FEMA to use its statutory authority to borrow funds from the U.S. Department of Treasury. These funds were used to pay covered flood damage claims to policyholders. Although payments have been made to reduce this obligation, $24 billion in debt remains.

Biggert-Waters Flood Insurance Reform Act of 2012

Congress determined that further reforms were needed to make sure the NFIP was financially sustainable.

To execute these reforms, Congress passed the Biggert-Waters Act. The law required changes to all of the major components of the program, including flood insurance, flood hazard mapping, grants and the management of floodplains. Many of the changes are designed to strengthen the fiscal soundness of the NFIP by ensuring that flood insurance rates more accurately reflect the real risk of flooding. The changes are being phased in over time, beginning this year. Biggert-Waters also reauthorized the NFIP for five years, which injected confidence and stability into the real estate and mortgage markets.

Removal of Subsidies and Grandfathered Rates

Biggert-Waters ushered in changes that will lead to premium rate increases for some – but not all – policyholders over time.

Today, I would like to focus on the sections of the Act that remove subsidies and grandfathered rates.

Currently, approximately 20 percent of policyholders, representing approximately 1.1 million of the 5.6 million NFIP policies, now pay subsidized rates. As FEMA implements the changes stipulated in the Biggert-Waters legislation, these policyholders will eventually pay rates that reflect actual risk to their properties. The remaining 80 percent of policyholders will not see increases as a result of this change, although it is possible that their rates will increase if, in the future, new maps reveal higher risk under the phase-out of grandfathered rates required by the legislation.

Specifically, the following changes for subsidized policyholders will be or have already been implemented due to the legislation:

- Beginning January 1, 2013, owners of properties previously eligible for subsidized rates on non-primary/secondary residences in a Special Flood Hazard Area (SFHA), saw a 25 percent increase annually in their rates, as required by the law, which will continue until rates reflect true risk.
- We anticipate that under a final rulemaking, owners of substantially damaged or improved properties previously eligible for subsidized rates will see a 25 percent rate increase annually, as required by the law, until rates reflect true risk.
- Beginning October 1, 2013, owners of subsidized policies on business/non-residential properties and severe or repetitive loss properties in a Special Flood Hazard Area will see a 25 percent rate increase annually, as required by the law, until rates reflect true flood risk.

All subsidized properties, including primary residences, will move immediately to actuarial rates if:

- The policy lapses;
- The property suffers severe, repeated, flood losses; or
- The property is purchased.

Each property's risk is different. Some policyholders may reach their true risk rate after less than five years of increases, while other policyholder increases may go beyond five years to get to the full risk rate required by the new law.

With regard to grandfathered rates, additional changes to premium rates may also occur upon remapping. We are evaluating when it is administratively feasible to implement these rate changes.

When a map is revised or updated, grandfathering will no longer be available. Grandfathering is applied in two situations: to allow policyholders in a Special Flood Hazard Area built in accordance with flood maps to keep rates that reflected that compliance even if a later map would increase their premium; and to enable structures built outside of the Special Flood Hazard Area and later remapped into the Area to purchase insurance based on an average cross-subsidized rate. The Act replaces the policy of offering grandfathered rates with a five year phase-in to rates that reflect the current risk when a FIRM is revised or updated.

The Role of Flood Maps and Levees

Mapping and identifying flood hazards enables informed, smart development and encourages communities to adopt and enforce minimum floodplain management regulations. These efforts minimize the financial impact of flooding on individuals and businesses, and mitigate the effects of flooding on new and improved structures.

FEMA consistently releases new flood maps and data, giving communities across America access to helpful, authoritative data that they can use to make decisions about flood risk, enabling safer development and rebuilding following disasters. FEMA is required to review community flood maps every five years and assess whether to revise or update them based on current conditions.

Flood hazard conditions are more accurately captured now as a result of FEMA's Risk Mapping, Assessment, and Planning (Risk MAP) program.

FEMA began implementing the Risk MAP program at the start of Fiscal Year (FY) 2009. Risk MAP not only addresses gaps in flood hazard data, but uses that updated data to form a solid foundation for risk assessment and floodplain management, and to provide local, state and tribal governments with information needed to mitigate flood-related risks. Risk MAP is introducing new products and services extending beyond the traditional digital flood maps produced in Flood Map Modernization, including visual illustration of flood risk, analysis of the probability of flooding, economic consequences of flooding and greater public engagement tools. FEMA is increasing its work with officials to help use flood risk data and tools to effectively communicate risk to citizens, and enable communities to enhance their mitigation plans.

FEMA has initiated 600 Risk MAP projects affecting 3,800 communities and addressed their highest priority engineering data needs, including coastal and levee areas.

Regarding levees, FEMA has also reviewed its approach to mapping flood hazards with respect to non-accredited levees. FEMA recognizes that levee systems that do not fully meet the requirements for accreditation may still provide some measure of flood risk reduction.

As a result, FEMA is introducing a new approach of targeted modeling procedures to replace the previous "without levee" approach, that did not recognize a non-accredited levee as providing any level of protection to communities behind the levees during the base (1-percent-annual-chance) flood. These procedures better characterize actual conditions that a community may encounter when addressing non-accredited levees or levee systems.

FEMA devised this new approach by leading a multidisciplinary project team comprised of representatives from FEMA, the U.S. Army Corps of Engineers, and experts from the academic and engineering communities to evaluate technical options for non-accredited levees. The FEMA-led team explored a broad spectrum of levee analysis and mapping procedures. Based on the results of the development, testing, review and public comment efforts, FEMA created and is implementing a levee analysis and mapping approach that is flexible and will produce more precise flood hazard maps and supporting data where levee systems are involved.

FEMA will use these new procedures to produce Flood Insurance Rate Maps (FIRMs), Flood Insurance Study reports, and related products for communities and Tribes impacted by non-accredited levee systems. A core goal of the new procedures includes identifying more precisely the flood hazard associated with levee systems and reflecting the results in the mapping. An important outcome of the effort is also increasing the credibility of FIRMs where non-accredited levee systems exist.

The new approach, accompanied by operating guidance, will be applied to a limited number of projects during FY 2013, and other future mapping projects will be prioritized as additional funding is available.

FEMA Regional Offices will be in contact with communities to identify participants for a discussion about their local levee system and to facilitate a Local Levee Partnership Team as needed.

This team will be comprised of FEMA and community representatives to provide input and guide the implementation of the approach.

Educating Stakeholders and Implementing the Provisions of Biggert-Waters

FEMA has undertaken significant steps to inform its policyholders and stakeholders about these changes to the NFIP, including educating:

- Insurance agents selling flood insurance;
- Realtors, the banking community, floodplain managers, insurance executives and others;
- Political leadership at local, state, tribal and federal levels;
- Disaster survivors so they can be informed should they choose to rebuild; and
- Affected policyholders, who will receive notification from their insurance company in their bills explaining changes.

The Act has also necessitated programmatic changes to the NFIP itself, including its processes and regulations. Areas specifically impacted by Biggert-Waters include actuarial sciences, insurance underwriting, floodplain management and floodplain mapping.

FEMA is actively meeting with affected communities throughout the country to discuss these changes. This summer, Associate Administrator for Federal Insurance and Mitigation David Miller traveled to Louisiana and Mississippi to see and hear first-hand the potential impacts of the law on policyholders. Additionally, many FEMA staff participated in outreach meetings with national and regional associations and communities to provide information on the new law. While in the Gulf Coast region, it was very clear that there are challenges to implementing the law when premiums may exceed $10,000 or in more high risk areas where homes are not easily elevated or bought out. In the Gulf Coast, many policyholders are required to have insurance and live near the industry jobs that support our national economy. In states with recent disasters like New Jersey and New York, communities are going through the process of adopting new maps as a result of increased risks found in mapping completed both pre-and post-disaster.

The Role of Mitigation in Affordability

As the NFIP transitions toward full risk rates, there will be significant increases in premiums for some subsidized and grandfathered structures. Individuals whose properties are at risk of flooding may lack the resources to make prudent risk management and mitigation decisions, including the decision to relocate, mitigate or purchase adequate insurance.

Pursuant to the provisions in Biggert-Waters, FEMA is charged with completing a study with the National Academy of Sciences to explore ways to: encourage/maintain participation in the NFIP, methods to educate consumers about the NFIP and flood risk, and methods for establishing an affordability framework for the NFIP, including implications of affordability programs for the NFIP and the Federal budget. The Academy estimates that it will likely take at least two years to complete the study due to the need to obtain data on policy-holders and their incomes.

There are steps the public can take to minimize their risk of damage should a flood occur, as well as to reduce premiums. FEMA's Hazard Mitigation Assistance (HMA) programs provide funds for projects that reduce the risk to individuals and property from natural hazards. These programs enable mitigation measures to be implemented before, during and after disaster recovery. Local jurisdictions develop projects that reduce property damage from future disasters and submit grant applications to the state. The states submit applications to FEMA based on state criteria and available funding. The HMA programs include:

- Hazard Mitigation Grant Program (HMGP) - The Hazard Mitigation Grant Program provides grants to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of HMGP is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during recovery from a disaster.
- Mitigation Assistance Grants - The Mitigation Assistance Grants program provides funds from the National Flood Insurance Fund on an annual basis so that measures can be taken to reduce or eliminate risk of flood damage to buildings insured under the NFIP.

FEMA encourages property and business owners concerned about potential rate increases as a result of Biggert Waters to contact their local community planning, emergency management or State Hazard Mitigation Officer to learn more about implementing these mitigation efforts.

Conclusion

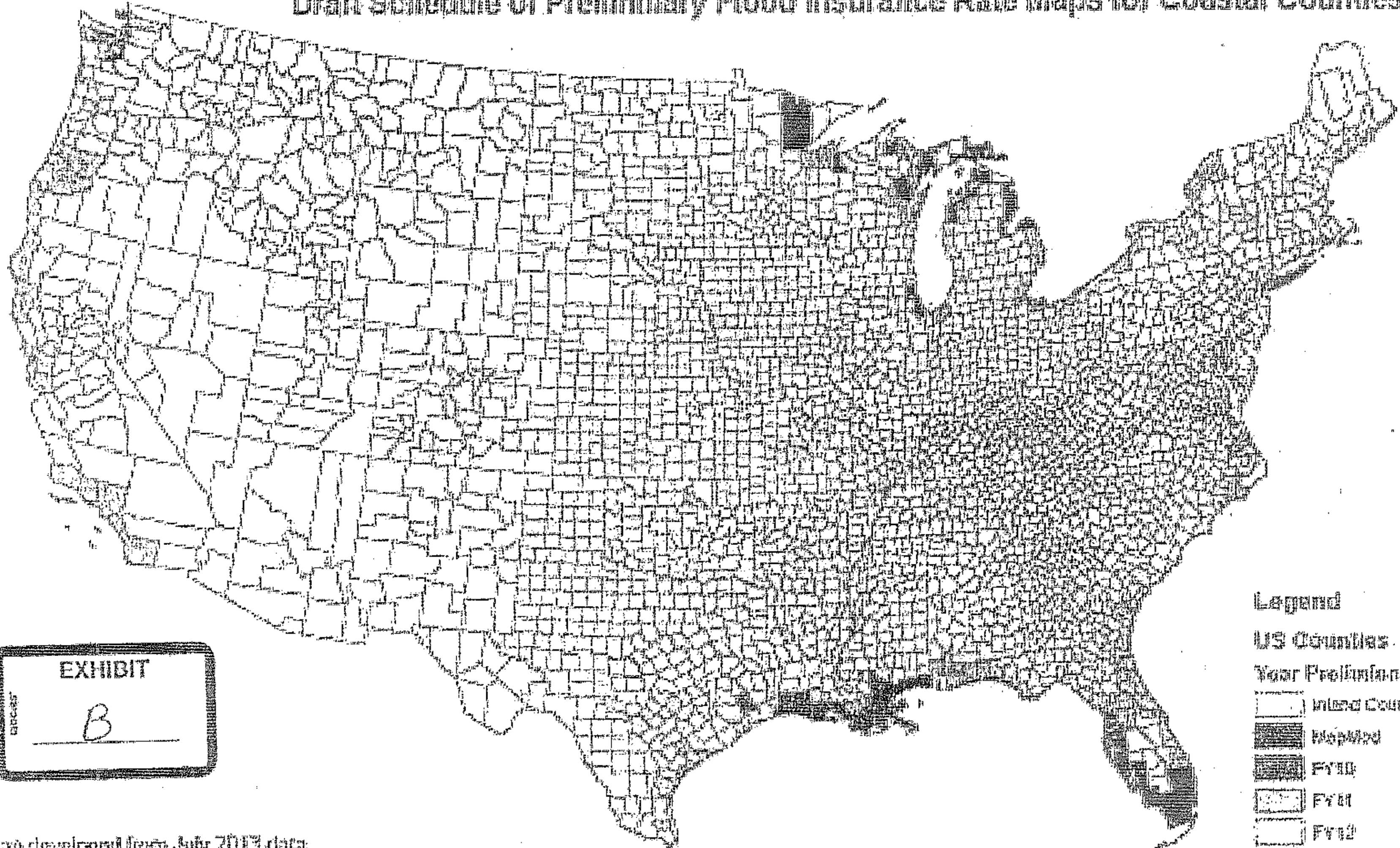
FEMA administers the NFIP to help communities increase their resilience to disaster through risk analysis, risk reduction and risk insurance. The NFIP helps individual citizens recover from the economic impacts of flood events, while providing a mechanism to reduce exposure to flooding through compliance with building standards and encouraging sound land-use decisions.

FEMA looks forward to working with the Congress as Biggert Waters is implemented.

Thank you again for the opportunity to appear before you today. I am happy to answer any questions you may have.

Review Date: September 18, 2013

Draft Schedule of Preliminary Flood Insurance Rate Maps for Coastal Counties



Legend

US Counties

Year Preliminary

Inland County

Mapped

FY10

FY11

FY12

FY13

FY14

FY15

FY16

FY17

EXHIBIT

B

Map developed from July 2013 data

The map above shows the Fiscal Year (FY13 = October 1, 2012 - September 30, 2013) that preliminary Flood Insurance Rate Maps (FIRM) are planned to be issued for each coastal county. This data is updated quarterly and therefore subject to change.

For more information please call 1-877-FEMA MAP (1-877-336-2627), email FEMAMapSpecialist@riskmapcds.com, or visit https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping/fema-coastal-flood-hazard-analyses-and-mappi-1

United States Government Accountability Office

Report to Congressional Committees

July 2013

FLOOD INSURANCE

More Information Needed on Subsidized Properties

GAO-13-607

GAO Highlights

Highlights of GAO-13-607, a report to congressional committees

Why GAO Did This Study

FEMA, which administers NFIP, estimated that in 2012 more than 1 million of its residential flood insurance policies—about 20 percent—were sold at subsidized rates; nearly all were located in high-risk flood areas. Because of their relatively high losses and lower premium rates, subsidized policies have been a financial burden on the program. Due to NFIP's financial instability and operating and management challenges, GAO placed the program on its high-risk list in 2006. The Biggert-Waters Act eliminated subsidized rates on certain properties and mandated GAO to study the remaining subsidized properties. This report examines (1) the number, location, and characteristics of properties that continue to receive subsidized rates compared with full-risk rate properties; (2) the information needed to estimate the historic cost of subsidies and establish rates for previously subsidized policies that reflect the risk of flooding; and (3) options to reduce the financial impact of remaining subsidized policies. GAO analyzed NFIP data on types of policies, premiums, and claims and publicly available home value and household income data. GAO also interviewed representatives from FEMA, insurance industry associations, and floodplain managers.

What GAO Recommends

FEMA should develop and implement a plan to obtain flood risk information needed to determine full-risk rates for properties with previously subsidized rates. FEMA agreed with the recommendation.

View GAO-13-607. For more information, contact Alicia Puente Cackley at (202) 512-8678 or cackleya@gao.gov.

July 2013

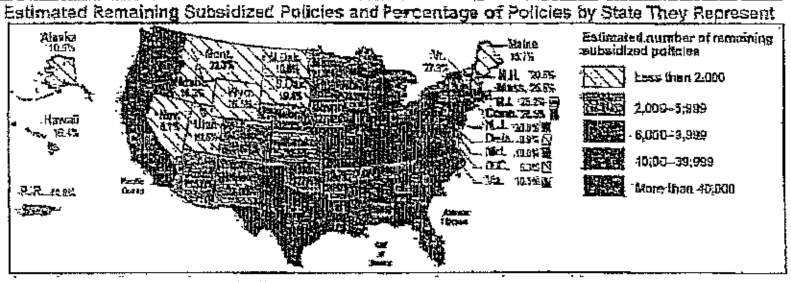
FLOOD INSURANCE

More Information Needed on Subsidized Properties

What GAO Found

The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) immediately eliminated subsidies for about 438,000 National Flood Insurance Program (NFIP) policies, but subsidies on an estimated 715,000 policies across the nation remain. Depending on factors such as policyholder behavior, the number of subsidized policies will continue to decline over time. For example, as properties are sold and the Federal Emergency Management Agency (FEMA) resolves data limitations and defines key terms, more subsidies will be eliminated. GAO analysis found that remaining subsidized policies would cover properties in every state and territory where NFIP operates, with the highest numbers in Florida, Louisiana, and California. In comparing remaining subsidized and nonsubsidized policies GAO found varying characteristics. For example, counties with the highest and lower home values had a larger percentage of subsidized versus nonsubsidized policies.

Estimated Remaining Subsidized Policies and Percentage of Policies by State They Represent



Sources: GAO analysis of FEMA data; Map Resources (map).

Data constraints limit FEMA's ability to estimate the aggregate cost of subsidies and establish rates reflecting actual flood risks on previously subsidized policies. FEMA does not have sufficient historical program data on the percentage of full-risk rates that subsidized policyholders have paid to estimate the financial impact—in terms of the difference between subsidized and full-risk premium rates—to NFIP of subsidies. Also, because not all policyholders are required to provide documentation about their flood risk, FEMA generally lacks information needed to apply full-risk rates (as required by the Biggert-Waters Act) on previously subsidized policies. FEMA is encouraging these policyholders to voluntarily submit this documentation. Federal internal control standards state that agencies should identify and analyze risks associated with achieving program objectives and develop a plan for obtaining needed data. Without this documentation, the new rates may not accurately reflect a property's full flood risk, and policyholders may be charged rates that are too high or too low relative to their risk of flooding.

Options from GAO's previous and current work for reducing the financial impact of subsidies on NFIP include (1) adjusting the pace of subsidy elimination, (2) targeting assistance or subsidies based on financial need, or (3) increasing mitigation efforts, such as relocation or elevation that reduce a property's flood risk. However, these options have advantages and disadvantages. Moreover, the options are not mutually exclusive, and combining them could help offset some disadvantages.

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Abbreviations

ACS	American Community Survey
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
NFIP	National Flood Insurance Program
SFHA	Special Flood Hazard Area
WYO	Write-Your-Own
ASFPM	Association of State Floodplain Managers
PwC	PricewaterhouseCoopers

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

July 3, 2013

The Honorable Tim Johnson
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

In 2012, the Federal Emergency Management Agency (FEMA), which administers the National Flood Insurance Program (NFIP), collected $3.5 billion in premiums. It estimated that about 1.1 million of 5.5 million NFIP policies—about 20 percent—were sold at highly discounted rates that did not fully reflect the actual risk of flooding. The National Flood Insurance Act of 1968 authorized subsidized rates to encourage participation in NFIP, especially for properties in high-risk locations that otherwise would have been charged higher premiums and were built before Flood Insurance Rate Maps (FIRM) became available and the level of risk was clearly understood. The discounted premiums help achieve the goal of promoting participation in the program, but do not contribute sufficient revenues to cover potential losses. We have previously found that because of their relatively high losses and lower premium rates compared with policies that are charged rates intended to reflect the actual risk of flooding (full-risk rates), the policies receiving subsidized rates have been a financial burden on NFIP.[1]

Since 2000, NFIP has experienced several years with catastrophic losses—losses exceeding $1 billion—and has needed to borrow money

[1] GAO, *Flood Insurance: Options for Addressing the Financial Impact of Subsidized Premium Rates on the National Flood Insurance Program*, GAO-09-20 (Washington, D.C.: Nov. 14, 2008).

from the U.S. Treasury (Treasury) to cover claims in some years.[2] The losses resulting from Superstorm Sandy, which caused extensive damage in several states on the eastern coast of the United States in October 2012, also are expected to be catastrophic. As of May 2013, FEMA owed Treasury $24 billion—up from $17.8 billion prior to Superstorm Sandy—and had not repaid any principal on its loans since 2010. As a result of the program's importance, level of indebtedness to Treasury, substantial financial exposure for the federal government and taxpayers, and FEMA's management challenges, NFIP has been on our high-risk list since 2006.[3] In other reports, we also have identified a number of management and operational challenges that have hindered FEMA's ability to effectively administer NFIP.[4]

The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) introduced many changes intended to strengthen the future solvency of NFIP.[5] In particular, the act eliminated subsidized premium rates for several types of properties.[6] In addition to program changes, the Biggert-Waters Act mandated that GAO conduct a number of studies, including this study on the properties that continue to receive subsidized rates after the implementation of the act and options to further reduce these subsidies.[7]

[2]FEMA has authority to borrow money from the U.S. Treasury to pay losses that exceed premium revenue and any accumulated surplus. Before Superstorm Sandy, this borrowing authority stood at $20.725 billion. In January 2013, Congress passed and the President signed into law a $9.7 billion increase in this authority to pay flood claims related to Superstorm Sandy. This raised FEMA's borrowing authority to $30.425 billion. Pub. L. No. 113-1, 127 Stat. 3 (Jan. 6, 2013).

[3]See GAO, *FEMA: Action Needed to Improve Administration of the National Flood Insurance Program*, GAO-11-297 (Washington, D.C.: June 9, 2011; *High-Risk Program*, GAO-06-497T (Washington, D.C.: Mar. 15, 2006); and *High-Risk Series: An Update*, GAO-13-359T (Washington, D.C.: Feb. 13, 2013).

[4]See GAO, *National Flood Insurance Program: Continued Actions Needed to Address Financial and Operational Issues*, GAO-10-1063T (Washington, D.C.: Sept. 22, 2010); GAO-11-297; and *Flood Insurance: FEMA's Rate-Setting Process Warrants Attention*, GAO-09-12 (Washington, D.C.: Oct. 31, 2008).

[5]Pub. L. No. 112-141, Div. F, Title II, Subtit. A, 126 Stat. 405, 916 (July 6, 2012).

[6]Pub. L. No. 112-141, §100205, classified as amended at 42 U.S.C. 4014(a)(2) and (g).

[7]Pub. L. No. 112-141, §100231.

This report discusses (1) the number, location, and financial characteristics of properties that continue to receive subsidized rates compared with full-risk rate properties; (2) the information needed to estimate the historic cost of subsidies and establish rates for previously subsidized policies that reflect the risk of flooding; and (3) options to reduce the financial impact of remaining subsidized properties.

To address these objectives, we analyzed FEMA data on NFIP flood insurance policies, claims, and repetitive losses, as well as historic data on claims and premiums for policies with subsidized and full-risk rates.[8] We used the data and information from FEMA officials about their plans to implement the Biggert-Waters Act to determine which policies would retain subsidized rates. We determined the number, location, and coverage amounts of these remaining subsidized policies, the claims and premiums attributable to them, and the historic frequency with which they exited the program. For requested information on the financial characteristics of policies that was not available from FEMA, we used indicators from publicly available census and real estate data as well as NFIP policy-level coverage amount data. We used these data to analyze the similarities and differences in the financial characteristics of properties with subsidized and full-risk rates. For example, we ranked nationwide county-level median home value and median household income from the 2007 through 2011 5-year American Community Survey (ACS)—a continuous survey of households conducted by the U.S. Census Bureau.[9] We determined the relative ranking for counties with large numbers of remaining subsidized policies. We also selected five case study counties to illustrate similarities and differences in characteristics of policies at the city level within these counties. Results from these case studies cannot be projected nationwide. We selected the counties based on the number of relevant NFIP policies, location, and reliability of publicly available real estate data for the county. We also used the publicly available real estate data on median home values for cities in these counties. We assessed the reliability of each data source we used by interviewing agency officials and gathering and analyzing available information about how the data

[8]The scope of this report excludes policies with grandfathered rates and policies with preferred risk premiums, which are also discounted.

[9]The 2007 through 2011 ACS 5-year estimates are based on multiyear period estimates for the years 2007 through 2011 and should not be interpreted as estimates for any particular year in that period.

were collected and maintained and performed electronic tests of required data elements. We also spoke with representatives from a private company that collects and estimates data on real estate values as well as with an academic and other users of these publicly available real estate data about the reliability of the data. We determined that the data from each source we used were sufficiently reliable for the purposes of this report. We analyzed NFIP's legislative history and relied on FEMA's interpretation and implementation of legislative requirements authorizing subsidized rates for certain properties in high-risk locations. We interviewed representatives of NFIP, the insurance industry, and floodplain managers. Finally, we spoke with an academic about a study of NFIP properties and analyzed other studies on relevant flood insurance issues. See appendix I for more details about our scope and methodology.

We conducted this performance audit from September 2012 to July 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Since the inception of NFIP in 1968, FEMA has sought to have local communities adopt floodplain management ordinances and offered flood insurance to their residents in an effort to reduce the need for government assistance after a flood. Premium subsidies were seen as a way to achieve the program's objectives by ensuring that owners of existing properties in flood zones could afford flood insurance. NFIP has three components: (1) the provision of flood insurance; (2) the requirement that participating communities adopt and enforce floodplain management regulations; and (3) the identification and mapping of floodplains. Community participation in NFIP is voluntary. However, communities must join NFIP and adopt FEMA-approved building standards and floodplain management strategies in order for their residents to purchase flood insurance through the program. Additionally, communities with Special Flood Hazard Areas (SFHA)—areas at high risk for flooding—must participate in NFIP to be eligible for any form of disaster assistance loans or grants for acquisition or construction purposes in connection with a flood. Participating communities can receive discounts on flood insurance if they establish floodplain management programs that go beyond the minimum requirements of NFIP.[10] FEMA can suspend communities that do not comply with the program, and communities can withdraw from the program. As of May 2013, about 22,000 communities voluntarily participate in NFIP.[11]

Potential policyholders can purchase flood insurance that covers both buildings and contents for residential and commercial properties. NFIP's maximum coverage limit for single-family residential policyholders is $250,000 per unit for buildings and $100,000 per unit for contents. For commercial policyholders, the maximum coverage is $500,000 per unit for buildings and $500,000 for contents.

Current law prohibits federally regulated lenders, federal agency lenders, and government-sponsored enterprises for housing from making loans for real estate in SFHAs where the community is participating in NFIP, unless the property is covered by flood insurance.[12] For structures deemed not to be in SFHAs—that is, that have moderate to low risk of flooding—the purchase of flood insurance is voluntary.

Flood Zone Designations

NFIP studies and maps flood risks, assigning flood zone designations from high to low depending on the risk of flooding. SFHAs are high-risk areas that have a 1 percent or greater annual chance of flooding and are designated as zones A, AE, V, or VE (table 1). Areas designated as V or VE are located along the coast. Areas with a moderate-to-low risk for flooding are designated as zones B, C, or X. Areas where analysis of the flood risk has not been conducted are designated as D zones.

[10] To be eligible for these discounts, communities must participate in the Community Rating System, a voluntary program established in 1990 to encourage community floodplain management activities that exceed the minimum NFIP standards. Under the Community Rating System, flood insurance premium rates are discounted to reward community actions that meet three goals: (1) reduce flood damage to insurable property, (2) strengthen and support the insurance aspects of NFIP, and (3) encourage a comprehensive approach to floodplain management.

[11] Not all participating NFIP communities have residents or businesses with policies.

[12] 42 U.S.C § 4012a. Flood insurance on properties that do not have a mortgage in these areas is voluntary.

Table 1: National Flood Insurance Program Flood Zone Designations

Designations	Risk level
Flood zones B, C, X	Moderate- to low-risk
Flood zones A, AE	Special Flood Hazard Area—High-risk
Flood zones V, VE	Special Flood Hazard Area—High-risk coastal
Flood zone D	Undetermined risk

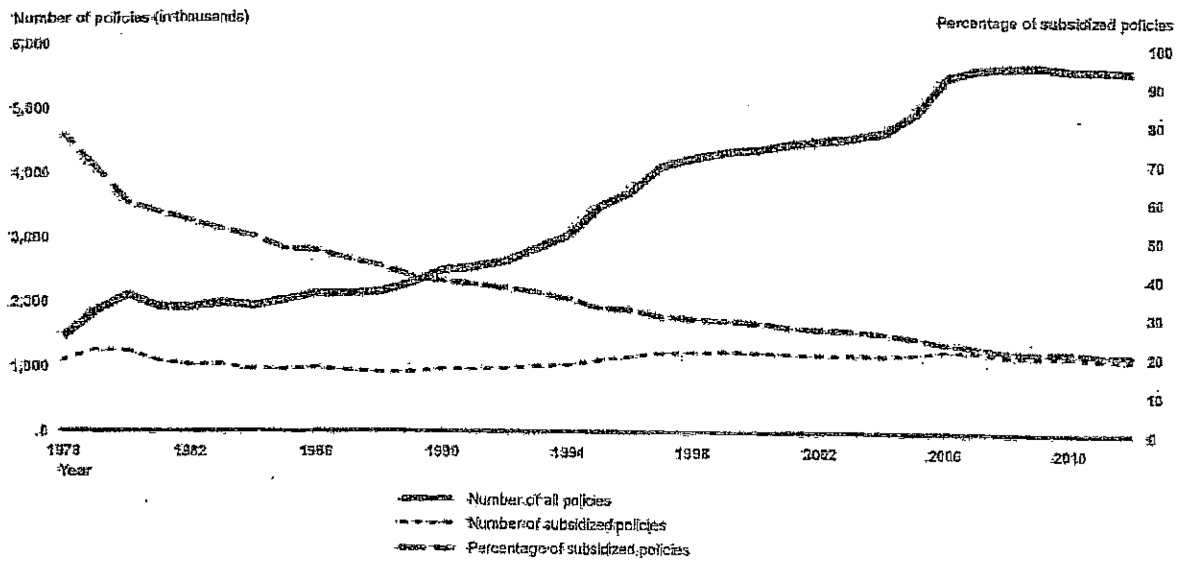
Source: FEMA.

Subsidized Premium Rates

NFIP offers two types of flood insurance premiums: subsidized and full-risk. Subsidized rates are not based on actual flood risk. According to FEMA, subsidized rates represent only about 40 percent to 45 percent of rates that reflect full flood risk. (We discuss how FEMA determines rates in more detail later in this report.) The type of policy and the subsequent rate a policyholder pays depend on several property characteristics—for example, whether the structure was built before or after a community's FIRM had been issued and the location of the structure in the floodplain. Structures built after a community's FIRM was published must be built to meet FEMA building standards and pay full-risk rates. Some communities may implement activities that exceed the minimum standards.

Prior to the Biggert-Waters Act, subsidized policies accounted for about 21 percent of all NFIP policies, while those with full-risk premiums accounted for the remaining 79 percent. While the percentage of subsidized policies has decreased since the program was established, the number of these policies has stayed fairly constant (see fig. 1).

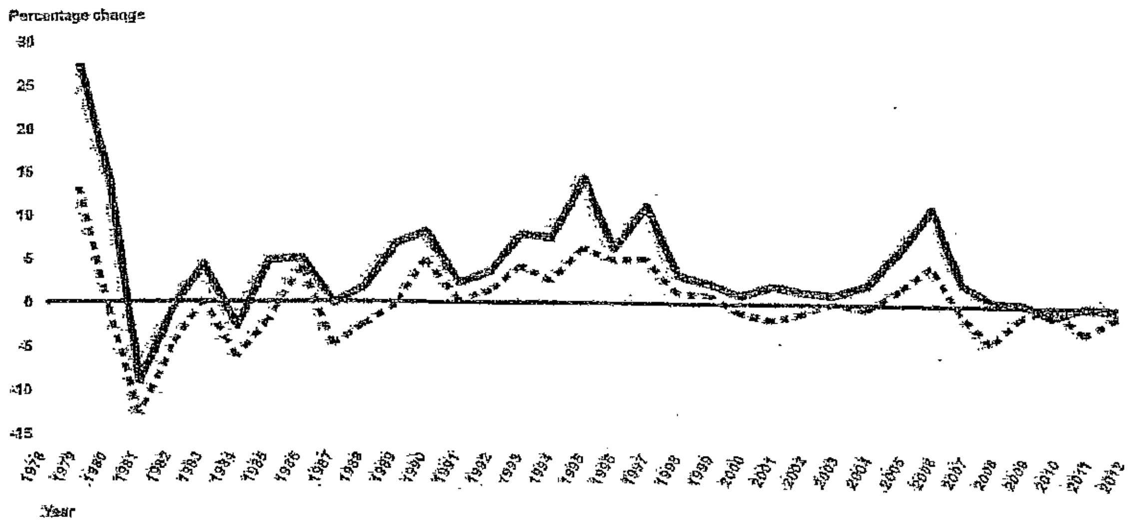
Figure 1: Number of Total NFIP Policies and Number and Percentage of Subsidized Policies, 1978-2012



Source: GAO analysis of FEMA data.

As communities were mapped and joined NFIP, new subsidized policies were added. As shown in figure 2, the percentage change in subsidized policies generally followed the same trend as the percentage change in total policies.

Figure 2: Percentage Change in Subsidized and Total NFIP Policies, 1978-2012



Source: GAO analysis of FEMA data.

Even with highly discounted rates, subsidized premiums are, on average, higher than full-risk premiums. The premiums are higher because subsidized pre-FIRM structures generally are more prone to flooding (that is, riskier) than other structures. In general, pre-FIRM properties were not constructed according to the program's building standards or were built without regard to base flood elevation—the level relative to mean sea level at which there is a 1 percent or greater chance of flooding in a given year. For example, the average annual subsidized premium with October 2011 rates for pre-FIRM subsidized properties located in zone A was about $1,200, while the average annual premium for post-FIRM properties in the same zone paying full-risk rates was about $500. Post-FIRM structures have been built to flood-resistant building codes or mitigation steps have been taken to reduce flood risks; thus, they are generally less flood-prone than pre-FIRM properties.[13]

Legislative Authority for and Changes to NFIP

The authority for subsidized rates was included in the National Flood Insurance Act of 1968 as an incentive for communities to join the program by adopting and enforcing floodplain management ordinances that would reduce future flood losses. Subsidies were intended to be only part of an interim solution to long-term adjustments in land use. Congress also authorized the use of subsidized premiums because charging rates that fully and accurately reflected flood risk would be a burden to some property owners. Table 2 shows the sources of legislative authority for various subsidized premium rates.

Table 2: Statutory Authority for NFIP Subsidized Rates, as of July 6, 2012

Type of property with subsidy	Definition/Description	Statute
Pre-FIRM A zone	Properties with unknown elevations relative to the base flood elevation in high-risk areas that were built before 1974 or before the effective date of a community's FIRM.	Sections 1307 and 1308 of the National Flood Insurance Act of 1968, as amended.[a]
Levees (AR and A99 zones)	Properties behind unfinished or de-certified levees (zones A99 and AR, respectively). In both cases FEMA has determined that the community is close to finishing/repairing the levee.	The National Flood Insurance Act of 1968 as added by section 816(b) of the Housing and Community Development Act of 1974, as amended.[b] The National Flood Insurance Act of 1968 as added by section 928 of the Housing and Community Development Act of 1992, as amended.[c]
Post-FIRM D zone	Properties with undetermined, but possible, flood hazards that were built after 1974 or the effective date of the community's FIRM.	Sections 1307 and 1308 of the National Flood Insurance Act of 1968, as amended.[d]
Pre-FIRM V zone	Properties located in Special Flood Hazard Areas without water surface elevations determined and with velocity that were built before FIRMs became available.	Sections 1307 and 1308 of the National Flood Insurance Act of 1968, as amended.[e]

[13]Steps taken to reduce flood risk are known as mitigation. According to FEMA, the key mitigation steps for residential properties are elevating a building to or above the area's base flood elevation, relocating the building to an area of lower flood risk, or demolishing the building and turning the property into green space. A community also can take steps to reduce flood risk to an area by diverting the flow of water through well-designed channels and retaining walls, or by containing the water through ponds.

Type of property with subsidy	Definition/Description	Statute
Post-FIRM V zone	Properties in coastal high-hazard areas built between 1975 and 1981 to be compliant with NFIP building code standards at the time, but that were grandfathered into rates when building code standards changed in 1981.	Section 1307 of the National Flood Insurance Act of 1968, as amended.[f]
Emergency Flood Insurance Program	Properties in communities participating in the Emergency Flood Insurance Program. The emergency program is a community's initial phase of participation in NFIP and is intended to provide a first layer amount of insurance at subsidized rates on all insurable properties before the effective date of the initial FIRM.	The National Flood Insurance Act of 1968 as added by section 408 of the Housing and Urban Development Act of 1969, as amended.[g]

Source: GAO analysis of applicable laws.

[a]Classified at 42 U.S.C. §§ 4014(a)(2) and 4015(a).

[b]Classified at 42 U.S.C. § 4014(e).

[c]Classified at 42 U.S.C. § 4014(f).

[d]Classified at 42 U.S.C. § 4014(a)(2) but limited by 42 U.S.C. 4015(c)(1).

[e]Classified at 42 U.S.C. §§ 4014(a)(2) and 4015(a).

[f]Classified at 42 U.S.C. § 4014(a)(2) but limited by 42 U.S.C. 4015(c).

[g]Classified at 42 U.S.C. § 4056.

Since NFIP was established, Congress has enacted legislation to strengthen certain aspects of the program. The Flood Disaster Protection Act of 1973 made the purchase of flood insurance mandatory for properties in SFHAs that are secured by mortgages from federally regulated lenders. This requirement expanded the overall number of insured properties, including those that qualified for subsidized premiums. The National Flood Insurance Reform Act of 1994 expanded the purchase requirement for federally backed mortgages on properties located in an SFHA. The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 established a pilot program to mitigate properties that continually suffered from severe repeated flood losses and offer grants for properties with repetitive insurance claims.[14] Owners of these "repetitive loss" properties who refuse to accept any offer for mitigation actions face higher premiums.

[14]Pub. L. No. 108-264, §§ 102, 104, 118 Stat. 712, 714, 722 (June 30, 2004).

More recently, in July 2012, Congress passed the Biggert-Waters Act.[15] The act extended the authorization for NFIP for 5 years and made reforms to NFIP that include eliminating existing subsidies for

- any residential property which is not a primary residence;
- any severe repetitive loss property;[16]
- any property that has incurred flood-related damage in which the cumulative amounts of payments under this title equaled or exceeded the fair market value of such property;
- any business property; and
- any property that has experienced or sustained substantial damage exceeding 50 percent of the fair market value or substantial improvement exceeding 30 percent of the fair market value.[17]

Rates that fully reflect flood risk for the types of properties listed previously are to be phased in over several years—with increases of 25 percent each year—until the average risk premium rate for such properties is equal to the average of the risk premium rates for properties within any single risk classification.

Furthermore, according to the Biggert-Waters Act, other properties will no longer qualify for subsidies under the following circumstances:

- any NFIP policy that has lapsed in coverage, as a result of the deliberate choice of the policyholder; and
- any prospective insured who refuses to accept any offer for mitigation assistance (including an offer to relocate) following a major disaster.[18]

[15] Pub. L. No. 112-141, Div. F, Tit. II, Subtit. A, 126 Stat. 405, 916 (July 6, 2012).

[16] For single-family properties, such properties have incurred at least four NFIP claim payments exceeding $5,000 each, with the cumulative amount of such claims payments exceeding $20,000; or at least two separate claims have been made with the cumulative amount of the claims exceeding the value of the property. For multifamily properties, FEMA will define the term by regulation.

[17] Pub. L. No. 112-141, §100205, classified as amended at 42 U.S.C. 4014(a)(2).

[18] Pub. L. No. 112-141, §100205, classified as amended at 42 U.S.C. 4014(g)(3) and (4).

The act also stated that no new subsidies would be provided to

- any property not insured by NFIP as of the date the act was enacted; and
- any property purchased after the date of enactment of the act. (Thus, property sales trigger elimination of subsidies.)[19]

The Biggert-Waters Act also requires FEMA to adjust rates to accurately reflect the current risk of flood to properties when an area's flood map is changed, subject to any other statutory provision in chapter 50 of Title 42 of the United States Code. FEMA is determining how this provision will affect properties that were "grandfathered" into lower rates. In addition, the act allows insurance premium rate increases of 20 percent annually (previously capped at 10 percent), establishes minimum deductibles, and requires FEMA to include the losses from catastrophic years in determining premiums that are based upon "average historical loss year." It also incorporates a definition of "severe repetitive loss property" for single-family properties and required FEMA to establish a reserve fund, among other things.

Most Subsidized Policies Continue to Receive Discounted Rates and Have Mixed Characteristics Relative to Financial Indicators

The Biggert-Waters Act eliminated subsidies on approximately 438,000 policies, and with the continuing implementation of the act, more of the subsidies on the approximately 715,000 remaining policies are expected to be eliminated over time. In terms of characteristics, the geographic distribution of remaining subsidized policies was similar to the distribution of all NFIP policies. Other characteristics we analyzed—indicators of home value and owner income—were different for the policies that continue to qualify for subsidized premium rates compared to those with full-risk rates. In particular, counties with higher home values and income levels tended to have larger percentages of remaining subsidized policies compared to those with full-risk rates.

[19]Pub. L. No. 112-141, §100205, classified as amended at 42 U.S.C. 4014(g)(1) and (2).

Most Policies Estimated to Still Qualify for Subsidized Rates, but their Numbers Are Expected to Decline over Time

We estimated that the Biggert-Waters Act eliminated subsidies for approximately 438,000 policies, and that about 715,000 policies continue to qualify for subsidized premium rates (remaining subsidized policies). Before the act, subsidized policies represented about 21 percent of all policies and nearly all subsidized policies were in the high risk areas.[20] After the initial reduction of subsidies, the approximately 715,000 policies that would continue to receive subsidized rates represent about 13 percent of all NFIP policies and 21 percent of all SFHA policies.[21] The elimination affected various property types, including nonprimary residences, businesses, and severe repetitive loss properties. About 92 percent of the projected remaining subsidized policies cover single-unit primary residence properties and more than 99 percent cover properties in SFHA areas. The continuing implementation of the act is expected to decrease the number of subsidized policies. However, FEMA faces a number of implementation challenges and elimination of subsidies as required by the act will likely take years.

Subsidy Elimination by Property Types

As mandated by the Biggert-Waters Act, FEMA has begun phasing out subsidized premiums for business properties, residential properties that are not primary residences, and single-family (1-4 units) severe repetitive loss properties.[22] According to our analysis of NFIP data, the 438,000 policies that would no longer qualify for subsidized premium rates included about 345,000 nonprimary residential policies, about 87,000 business policies, and about 9,000 single-family severe-repetitive loss policies.[23] Nearly all subsidized policies for primary residential properties continue to have subsidized rates. Figure 3 summarizes our analysis of the immediate decreases in subsidized policies stemming from the act, by property type.

[20]Before the act, subsidized policies represented about 34 percent of all SFHA policies (33 percent of all A-zone policies and 52 percent of all V-zone policies).

[21]Policy owners that no longer qualify for subsidized rates will begin paying higher premiums, however it will take several years of increases before they are paying full-risk rates.

[22]Pub. L. No. 112-141, §100205(a)(1).

[23]Because there is some overlap among categories, the numbers do not sum to 438,000.

Figure 3: Estimated Decreases in NFIP Subsidized Policies Due to the Biggert-Waters Act, by Property Type, as of June 2012

Category	All policies	Number of previously subsidized policies	Number of remaining subsidized policies	Percent decrease
Total	5,537,386	1,153,193	715,259	37.98 %
Property type				
Residential	5,253,979	1,063,563	713,117	32.95
Primary residence (principal)	3,598,194	709,484	704,230	.74
Nonprimary residence	1,855,785	354,079	8,887	97.49
Nonresidential	283,406	89,630	2,142	97.61
Flood zone				
A-zone	3,315,581	1,106,899	697,219	37.01
V-zone	83,977	44,089	17,223	60.94
Other flood zones	2,137,730	2,205	817	62.95
Other factors				
Single-unit primary residence	3,327,918	664,385	659,265	.77
Severe repetitive loss	18,096	10,128	1,057	89.56

Source: GAO analysis of FEMA data.

Note: This analysis assumes that most nonresidential subsidies would be eliminated and that only the subsidies for severe repetitive loss policies defined as such in the act would be eliminated. FEMA data on the status or category of certain properties may not be current. In addition, FEMA separates out policies on condominiums, whereas we included them in the primary and nonprimary categories. Thus, our estimates could vary from FEMA's results. Further, there is some overlap in these categories and the residential and nonresidential categories do not add up to the total number of policies because the information in FEMA's database designating policies as residential or nonresidential was invalid for one policy.

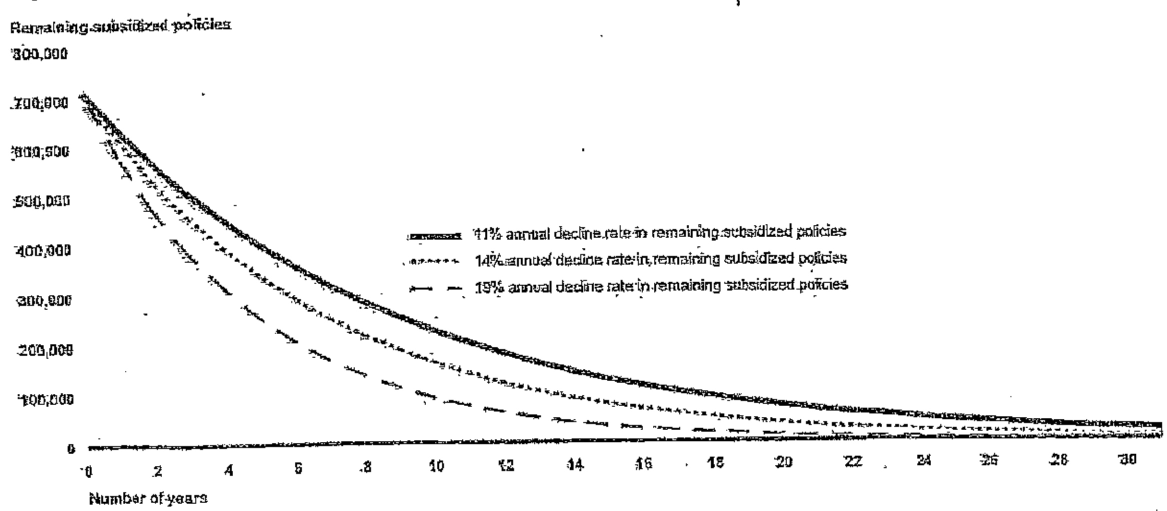
Continuing Decline in Subsidized Policies

Subsidies on most of the approximately 715,000 remaining subsidized policies should be eliminated over time. Under provisions of the Biggert-Waters Act, most policies no longer qualify for subsidies if NFIP coverage lapsed or the properties were sold or substantially damaged.[24] We estimated that with implementation of the changes in the act addressing sales and coverage lapses, the number of subsidized policies could decline by almost 14 percent per year (see fig. 4). At this rate, the number of subsidized policies would be reduced by 50 percent in approximately 5 years. After about 14 years, fewer than 100,000 subsidized policies would

[24] Substantially damaged is defined as damage exceeding 50 percent of the fair market value of the property.

remain. We based our estimate of the annual decline rate on the average experience of the last 10 years of NFIP data using policies with similar characteristics, but the actual outcomes and time required for subsidies to be reduced could vary. For example, the average annual decline rate for the most recent 3 years of NFIP data was about 11 percent. At this rate, the number of subsidized policies would be reduced by 50 percent in approximately 7 years, and after 18 years, fewer than 100,000 subsidized policies would remain. Additionally, changes from the act may affect the behavior of policyholders. For example, policyholders might not allow their coverage to lapse if they knew that they would lose their subsidy or they might not be able to sell their properties at the same rate if the flood insurance was more expensive.[25]

Figure 4: Estimated Number of NFIP Remaining Subsidized Policies Using Varying Annual Decline Rates



Source: GAO analysis of FEMA data.

[25]We compared our results with existing literature. See Erwann Michel-Kerjan, Sabine Lemoyne de Forges, and Howard Kunreuther, "Policy Tenure Under the U.S. National Flood Insurance Program (NFIP)," *Risk Analysis*, 32, no. 4 (April 2012). This study looked at policy tenure rather than decline. We compared our results to this study's results by calculating the average decline rate from their published tenure duration results. Our analysis showed about a 5 percent slower decline rate than this study. The difference was due in part to the data differences. We were able to determine when policyholders changed insurance carriers whereas these data were not available for the tenure study.

Note: We used a 13.80 percent decline rate based on analysis of 10 years of historic NFIP policy data, a 10.86 percent decline rate based on the 3 most recent years of the NFIP policy data, and an 18.86 percent decline rate based on calculations of data from Michel-Kerjan et al. study (2012).

Implementation Challenges

The Biggert-Waters Act will likely require several years for FEMA to fully implement. FEMA officials acknowledged that they have data limitations and other issues to resolve before eliminating some subsidies. We projected that subsidies on most of the policies required to be eliminated by the act could be identified in FEMA's data; however, data limitations make implementation of some provisions of the act more difficult. For example, the act eliminated subsidies for residential policies that covered nonprimary residences. FEMA has data on whether a policy covers a primary residence but officials stated that it may be outdated or incorrect. In the past, FEMA did not collect this information for policy renewal so it may have changed over time. The act also eliminated subsidies for business policies. However, FEMA categorizes policies as residential and nonresidential rather than residential and business. As a result, FEMA does not have the information to identify nonresidential properties, such as schools or churches that are not businesses and continue to qualify for a subsidy. Beginning in October 2013, FEMA will require applicants to provide residential and business status for new policies and renewals.

Additionally, the act states that subsidies will be eliminated for policies that have received cumulative payment amounts for flood-related damage that equaled or exceeded the fair market value of the property, and for policies that experience damage exceeding 50 percent of the fair market value of the property after enactment. Currently, FEMA is unable to make this determination as it does not maintain data on the fair market value of properties insured by subsidized policies. FEMA officials said that they are in the process of identifying a data source.

FEMA will have to determine how to apply certain provisions of the Biggert-Waters Act before eliminating some subsidies. For example, the act eliminates subsidies for severe repetitive loss policies and provides a definition of severe repetitive loss for single-family homes. However, it requires FEMA to define severe repetitive loss for multifamily properties. FEMA has not yet developed this definition and we estimate that 1,000 multifamily severe repetitive loss policies will continue to receive a subsidy until the definition is developed and applied.[26] The act also

[26] We based this estimate on FEMA data which uses a previous definition of severe repetitive loss.

eliminates subsidies when properties are purchased. However, FEMA has not yet determined how to apply this provision of the act to condominium associations. Finally, FEMA officials stated that they have been applying the provisions of the act that eliminate subsidies only to pre-FIRM policies. As a result, approximately 5,500 subsidized post-FIRM V zone structures built before 1981 that currently receive subsidized rates would continue to qualify for subsidies.[27]

Similarities and Differences between Properties with Subsidized versus Full-Risk Rates

We analyzed a number of characteristics of the remaining subsidized policies. First, they had a geographic distribution similar to all NFIP policies. Second, while higher percentages of remaining subsidized policies than policies with full-risk rates were found in counties with higher median home values, remaining subsidized policies generally carried smaller amounts of coverage. Third, counties with the highest median household incomes and counties at the lower end of our income ranking had larger percentages of remaining subsidized policies compared to the percentage of policies with full-risk rates. We limited our analysis of the similarities and differences between remaining subsidized policies and the policies with full-risk rates (nonsubsidized) to single-unit primary residences in SFHAs.[28]

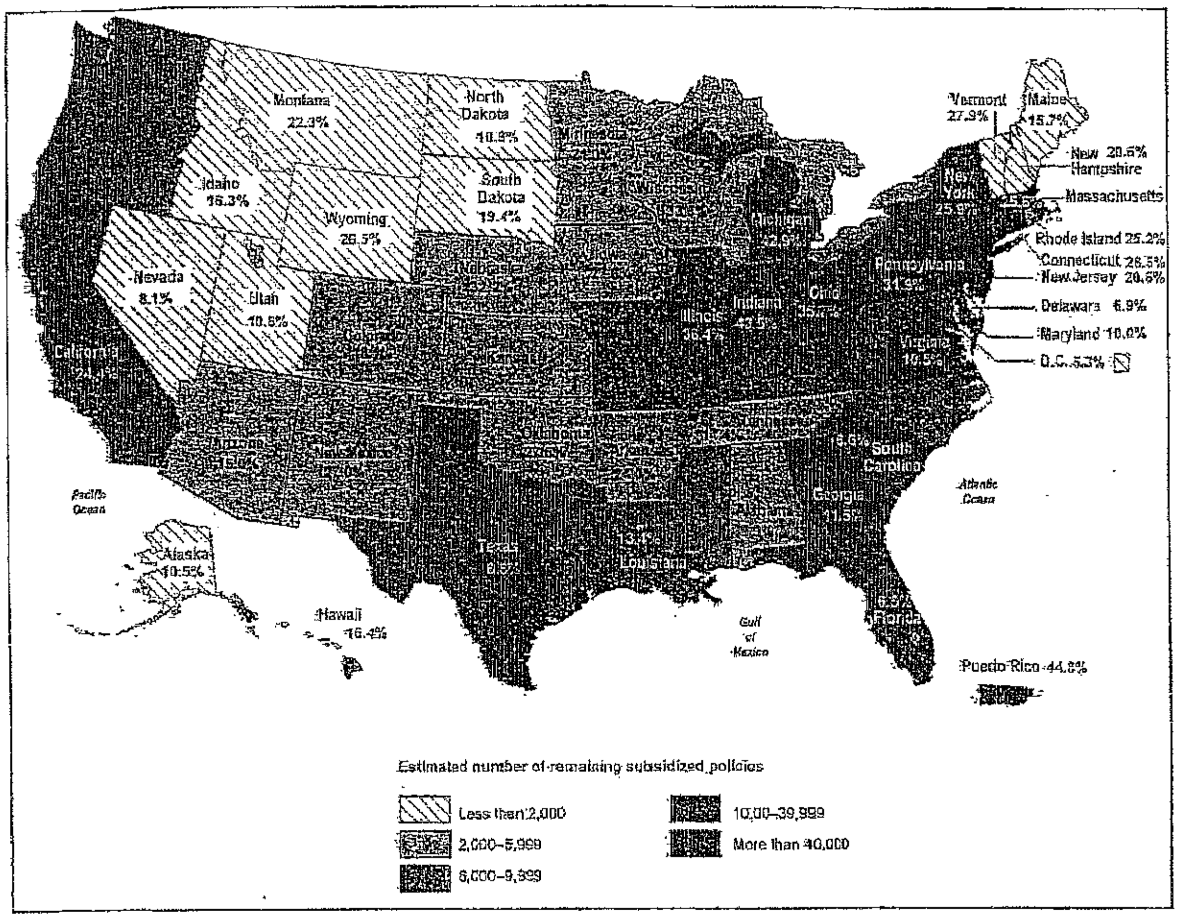
Location

Our analysis of NFIP data on the location of properties that would continue to receive subsidized rates shows that remaining subsidized policies would cover properties in every state and territory in which NFIP operates. Florida (133,000), Louisiana (65,000), California (64,000), New Jersey (48,000), Texas (44,000), and New York (43,000) had the highest numbers of remaining subsidized policies. These states with the addition of South Carolina also had the highest number of total NFIP policies. In contrast, Indiana, Michigan, and Puerto Rico had the highest percentages of remaining subsidized policies as a fraction of total NFIP policies in the state, representing more than 40 percent of all NFIP policies in those states. Figure 5 shows the estimated number of remaining subsidized policies by state and the remaining subsidized policies as a percentage of total NFIP policies in the state.

[27] According to FEMA documentation, because the previously compliant construction would be subject to very high rates if held to the later standards, discussions with Congress led to the decision to charge 1975 through 1981 construction with less than the full-risk premium rates.

[28] About 92 percent of the projected remaining subsidized policies cover single-unit primary residence properties and more than 99 percent cover properties in SFHA areas.

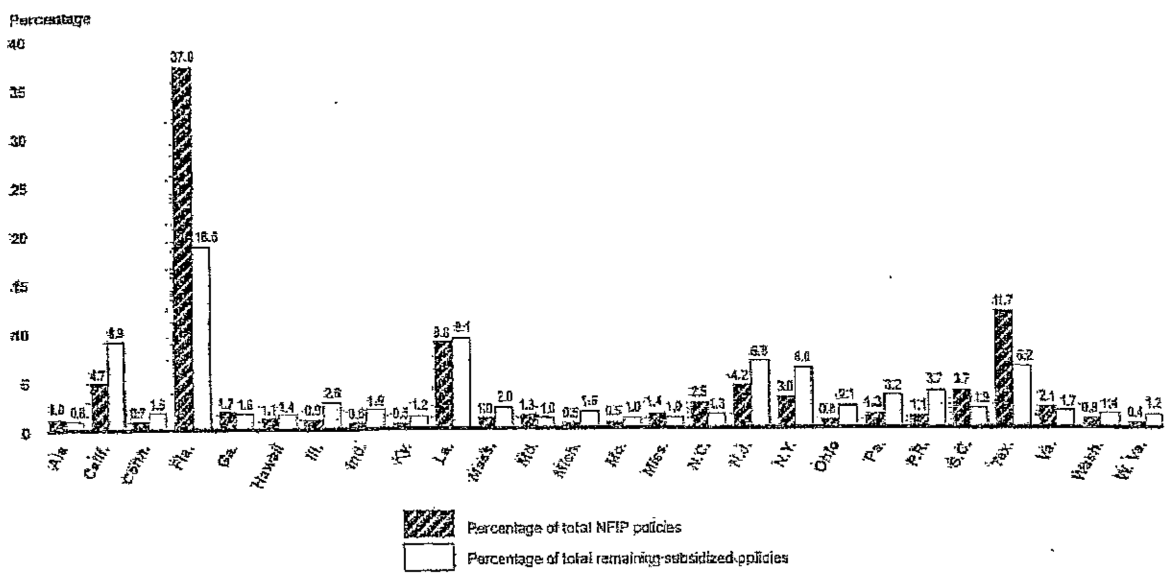
Figure 5: Numbers of Estimated Remaining Subsidized Policies and the Percentage of NFIP Policies, by State, They Represent, as of June 2012



Sources: GAO analysis of FEMA data; Map Resources (map).

States with the highest percentage of remaining subsidized policies did not necessarily have the highest percentage of total NFIP policies. Some states had a higher percentage of remaining subsidized policies than the percentage of total NFIP policies in the state (see fig. 6). For example, California had 9 percent of all remaining subsidized policies and about 5 percent of all NFIP policies, and New York had 6 percent of all remaining subsidized policies and 3 percent of all policies. Other states had a larger percentage of total NFIP policies than subsidized policies. For example, Florida had 37 percent of total NFIP policies and about 19 percent of all remaining subsidized policies and Texas had about 12 percent of all policies and 6 percent of remaining subsidized policies.

Figure 6: Percentage of All NFIP and Remaining Subsidized Policies by Selected States, June 2012



Sources: GAO analysis of FEMA data.

Note: States not listed had less than 1 percent of all NFIP policies and remaining subsidized policies.

When analyzed by county, the remaining subsidized policies were located in about 2,930 of the more than 3,100 counties with NFIP policies. The number of remaining subsidized policies in the counties varied greatly. We estimated that 151 counties had only one remaining subsidized policy, and another 1,137 had fewer than 25 remaining subsidized policies. We also estimated that 247 counties had more than 500 of these policies. Ten of these counties had more than 10,000 remaining subsidized policies, 4 of which were in Florida, 2 in Louisiana, and 1 each in California, New Jersey, New York, and Texas. Pinellas County, Florida, had the highest number of estimated remaining subsidized policies at more than 28,000.

Home Value

Counties with the highest median home values tended to have a higher percentage of remaining subsidized policies than nonsubsidized policies. For our analysis of the financial characteristics of remaining subsidized and nonsubsidized policies, we selected 351 counties that represented more than 78 percent of remaining subsidized policies.[29] See appendix II for more information about the 351 counties we selected for our analysis. Because FEMA lacks data on home values, we used several indicators of home value to compare properties in these counties that would continue to receive subsidized rates with properties charged full-risk rates (see table 3). Most of the policies were in the counties with relatively high home values. For example, the median home value for more than half of the selected counties was in the top quartile of counties nationwide. Further, the median home value for more than one-third of the selected counties was in the top 10 percent of median home values for all counties nationwide.

Table 3: Home Value Indicators, Source, Use, and Findings of GAO Analysis of NFIP Policies

Indicator	Source	Use	Finding
County median home value	2007 through 2011 American Community Survey (ACS) 5-year data for all U.S. counties	Analyzed the data to determine relative ranking of the 351 selected counties relative to all counties.	Counties with the highest and lower home values tended to have larger percentages of remaining subsidized policies than nonsubsidized policies in Special Flood Hazard Areas (SFHA).
Amount of building coverage for each single-unit primary residence policy located in an SFHA	NFIP policy database	Analyzed the data to determine the number and percentage (at different coverage amounts) of remaining subsidized and nonsubsidized policies.	Remaining subsidized policies generally carried lower amounts of coverage than nonsubsidized policies in SFHAs.
City median home value index	Zillow for 5 selected case study counties	Analyzed the data to illustrate whether different results occurred at the city level.	Results varied by location.

Source: GAO.

[29] For our analysis of the financial characteristics of remaining subsidized and nonsubsidized policies, we used 351 counties that represented 78 percent of all remaining subsidized policies nationwide, 77 percent of all single-unit primary residence remaining subsidized policies, and 77 percent of all NFIP policies. We selected all counties with more than 500 remaining subsidized single-unit primary residence policies and the five counties in every state (and Puerto Rico) with the most remaining subsidized policies for single-unit primary residences regardless of number.

The results of our analysis of home values varied depending on the indicator and the location. Our analysis showed that in the counties with the highest and lower median home values the percentage of remaining subsidized policies was larger than nonsubsidized policies in SFHAs. For example, about 43 percent of total NFIP policies in the selected 351 counties were in the highest decile of median home values, but about 43 percent of the remaining subsidized policies compared with about 35 percent of nonsubsidized policies were in these counties. Very few policies of any type were in counties in the lower deciles of median home value (deciles 6-10), however in these counties there were higher percentages and larger numbers of remaining subsidized policies than nonsubsidized policies (see table 4).

Table 4: NFIP Policies in SFHAs by County Median Home Value Ranking, as of June 2012

Decile	Number (percentage) of selected counties	Number (percentage) of remaining subsidized policies (for single-unit primary residences) in these counties	Number (percentage) of nonsubsidized policies (for single-unit primary residences) in these counties	All NFIP policies in these counties[a]
1 (high)	123 (35.04%)	217,329 (42.90%)	322,923 (34.73%)	1,814,219 (42.59%)
2	63 (17.95%)	131,302 (26.12%)	453,286 (48.74%)	1,480,097 (34.74%)
3	46 (13.11%)	49,477 (9.77%)	72,220 (7.77%)	354,644 (8.32%)
4	44 (12.54%)	47,875 (9.45%)	50,626 (5.44%)	419,550 (9.85%)
5	33 (9.40%)	33,565 (6.63%)	18,947 (2.04%)	122,106 (2.87%)
6	19 (5.41%)	11,177 (2.21%)	3,905 (0.42%)	26,801 (0.63%)
7	13 (3.70%)	10,988 (2.17%)	6,742 (0.72%)	33,056 (0.78%)
8	5 (1.42%)	1,499 (0.30%)	208 (0.02%)	2,948 (0.07%)
9	3 (0.85%)	1,651 (0.33%)	816 (0.09%)	4,591 (0.11%)
10 (low)	2 (0.57%)	710 (0.14%)	266 (0.03%)	2,156 (0.05%)
Total	351	506,572	929,940	4,260,169

Source: GAO analysis of FEMA and ACS data.

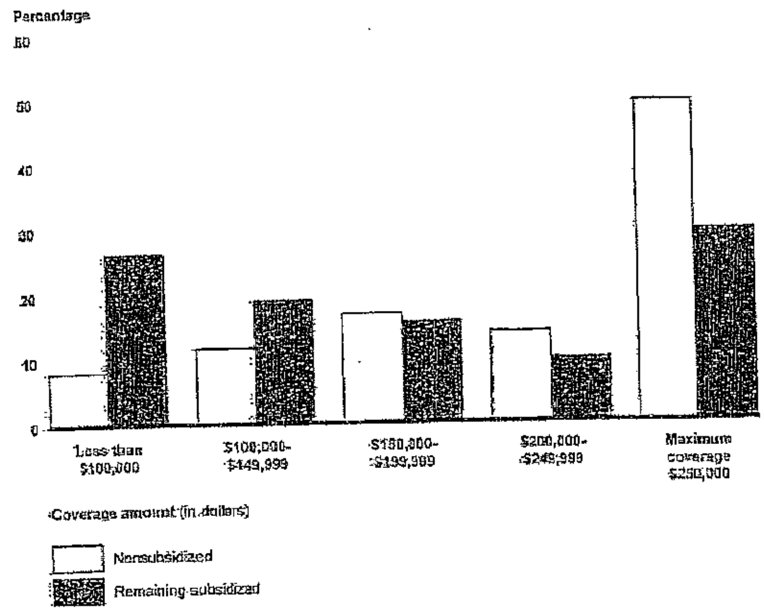
Note: Deciles are determined using 2007 through 2011 American Community Survey (ACS) 5-year estimates on county median home values for the 50 states, Washington, D.C., and Puerto Rico.

[a]Includes all flood zones.

Our analysis of coverage amounts found that remaining subsidized policies generally carried smaller NFIP coverage amounts than nonsubsidized policies in SFHAs, a possible indicator of lower home values.[30] As shown in figure 7, a smaller percentage of remaining subsidized policies had the maximum coverage of $250,000 than nonsubsidized policies (29 percent versus about 50 percent). Also, a larger percentage of remaining subsidized policies had less than $100,000 in building coverage than nonsubsidized policies (26 percent versus 8 percent). The results of our comparison of coverage amounts could indicate that the subsidized policies were for lower-valued properties, but the perceived flood risk and cost of coverage also could affect the coverage amount. Finally, a larger percentage of V-zone policies had the maximum coverage amount than the A-zone policies but represented a small fraction of all SFHA policies. Further details of our analysis by flood zone appear in appendix II.

[30]As noted earlier, FEMA does not have information on the fair market value of properties covered by flood insurance, but the agency does have information on the amount of coverage carried on a property. Coverage amount is not a perfect proxy for home value because it is limited by NFIP's maximum building coverage amount of $250,000 per residential unit. However, coverage amount can give an indication of a property's value relative to other properties.

Figure 7: Percentage of NFIP Policies in SFHAs by Building Coverage Amounts in Selected Counties, as of June 2012



Source: GAO analysis of FEMA data.

Note: The selected 351 counties comprise 77 percent of total NFIP policies.

We analyzed NFIP coverage amounts (on single-unit primary residence nonsubsidized policies and remaining subsidized policies in SFHAs) and county median home values together and found that higher coverage amounts were associated with higher county median home values. Counties with higher median home values had larger percentages of both remaining subsidized policies and nonsubsidized policies at the NFIP maximum coverage level of $250,000 than counties with lower median home values. In addition, counties with lower median home values generally had larger percentages of remaining subsidized policies and nonsubsidized policies with lower amounts of coverage (less than $100,000) than counties with higher median home values. However, nonsubsidized policies consistently had higher amounts of coverage. In every decile of county median home value, a larger percentage of nonsubsidized policies had the maximum amount of NFIP coverage than remaining subsidized policies, while a smaller percentage of nonsubsidized policies had lower amounts of coverage (less than

$100,000) than remaining subsidized policies. Additional details of the combined analysis are presented in appendix II.

We performed five case studies to illustrate results in specific counties. The case studies offer a more in-depth, within county view (how characteristics vary across cities within select counties). We performed the NFIP coverage and median home value analyses, but also used publicly available real estate data to examine city-level median home values within the county.[31] These cases are illustrative only and are not nationwide indicators, and some of the results from these case studies matched our earlier results and some did not. Los Angeles County is one illustration of how NFIP policies compared within a county, but other counties had different results. The results of the other case study counties are presented in appendix II.

Case Study: Los Angeles County, California

- Los Angeles County had a median home value in the top 10 percent of all counties and consistent with our earlier results had a higher percentage of remaining subsidized policies than nonsubsidized policies in SFHAs (more than twice as many policies).
- Consistent with our analysis of NFIP coverage amounts, a lower percentage of remaining subsidized policies in Los Angeles County had maximum building coverage than nonsubsidized policies (59 versus 77 percent), but a higher percentage had building coverage less than $100,000 (6 versus 3 percent).
- However, Los Angeles County also had a high percentage of both subsidized and nonsubsidized policies with maximum NFIP coverage and a low percentage of both types of policies at lower levels of coverage.
- Our analysis of the city median home value in Los Angeles County found that about 88 percent of remaining subsidized and nonsubsidized policies were in cities in the second and third quartiles of median home value.
- Additionally, although Los Angeles County is located on the Pacific Ocean, it had 120 V-zone (high-risk velocity coastal) policies compared to about 6,000 A-zone (high-risk) policies. Ninety-seven of the V-zone policies were remaining subsidized policies and all were located in a single city with a median home value in the top quartile of median home value.

[31]We used Zillow city-level median home value index data from January 2013.

Income Level

Comparing policies in SFHAs in the selected counties, our analysis showed that in counties with the highest and lowest median household incomes, there were a larger percentage of remaining subsidized policies than nonsubsidized policies. We used county median household income from the 2007 through 2011 ACS 5-year data for all U.S. counties as an indicator of household income for property owners. We analyzed the data to determine relative ranking of the 351 selected counties relative to all counties and compared the number and percentage of properties that would continue to receive subsidized rates with properties charged full-risk rates. In general, most of all of the policies in our analysis were in counties with higher median household income (deciles 1-4), with fewer policies in the counties with lower median household income counties. However, counties in the highest and lowest decile in median household income had higher percentages of remaining subsidized policies than nonsubsidized policies (see table 5). For example, 19 percent of all policies in the 351 selected counties were in the highest decile of median household income. But about 29 percent of the remaining subsidized policies were in these counties versus about 11 percent of nonsubsidized policies. One percent of all policies in the selected counties were in the lowest decile of median household income. But 4 percent of the remaining subsidized policies were in these counties versus 1 percent of nonsubsidized policies.

Table 5: NFIP Policies in SFHAs by County Median Household Income Ranking, as of June 2012

Decile	Number (percentage) of selected counties	Number (percentage) of remaining subsidized policies (for single-unit primary residences) in these counties	Number (percentage) of nonsubsidized policies (for single-unit primary residences) in these counties	All NFIP policies in these counties[a]
1 (high)	90 (25.64%)	146,801 (28.98%)	103,624 (11.14%)	826,647 (19.40%)
2	70 (19.94%)	95,802 (18.91%)	153,852 (16.54%)	1,066,461 (25.03%)
3	50 (14.25%)	87,316 (17.24%)	375,420 (40.37%)	1,058,017 (24.84%)
4	36 (10.26%)	55,030 (10.86%)	60,313 (6.49%)	346,222 (8.13%)
5	36 (10.26%)	50,225 (9.91%)	174,085 (18.72%)	641,907 (15.07%)
6	20 (5.70%)	17,010 (3.36%)	12,622 (1.36%)	112,674 (2.64%)

Decile	Number (percentage) of selected counties	Number (percentage) of remaining subsidized policies (for single-unit primary residences) in these counties	Number (percentage) of nonsubsidized policies (for single-unit primary residences) in these counties	All NFIP policies in these counties[a]
7	13 (3.70%)	8,086 (1.60%)	7,718 (0.83%)	33,307 (0.78%)
8	13 (3.70%)	22,653 (4.47%)	29,103 (3.13%)	118,893 (2.79%)
9	7 (1.99%)	2,874 (0.57%)	1,319 (0.14%)	9,946 (0.23%)
10 (low)	16[b] (4.56%)	20,774 (4.10%)	11,885 (1.28%)	46,095 (1.08%)
Total	351	506,572	929,940	4,260,169

Source: GAO analysis of NFIP and ACS data.

Note: Deciles are determined using 2007 through 2011 American Community Survey (ACS) 5-year estimates on county median home values for the 50 states, Washington, D.C., and Puerto Rico.

[a]Includes all flood zones.

[b]Fourteen of the 16 counties in the tenth decile were in Puerto Rico.

We also examined home value and household income indicators together. Selected counties with the highest median household incomes and highest median home values had higher percentages of remaining subsidized policies than nonsubsidized policies in SFHAs. For example, 78 of the 351 selected counties were in the highest decile category for both median home value and median household income. About 26 percent of remaining subsidized policies were in these counties, compared with 7 percent of nonsubsidized policies. Selected counties with higher median household income generally also had higher median home values, but counties with higher median home values did not always have higher median incomes. Higher percentages of remaining subsidized policies than nonsubsidized policies were found in counties with lower median home values and lower median household incomes. More detail on these results can be found in appendix II.

Data Constraints Limit FEMA's Ability to Estimate the Cost of Subsidies and Establish Full-Risk Rates on Previously Subsidized Policies

The cost of subsidized policies to NFIP can be measured in terms of forgone net premiums (the difference between subsidized and full-risk rates, adjusted for premium-related expenses). However, FEMA does not have the historical program data needed to make this calculation. Because of this constraint, estimating the historic cost of subsidies on NFIP is difficult. FEMA also does not have information on the flood risk of properties with previously subsidized rates, which is needed to establish full-risk rates for these properties going forward.

Historical Cost of Subsidies Difficult to Estimate

FEMA does not have sufficient data to estimate the aggregate cost of subsidies. Since fiscal year 2002, FEMA's annual actuarial rate reviews have included an estimated range of the percentage of the full-risk premiums that policyholders with subsidized premiums pay. (We refer to this as the subsidy rate). FEMA based these estimated ranges, in part, on the analysis in a 1999 report conducted by PricewaterhouseCoopers (PwC), which sampled pre-FIRM structures around the nation and collected information on elevation of the properties to calculate what the full-risk rates on these properties would have been.[32] FEMA has continued to use this report as the basis for estimating the percentage of the full-risk rate that subsidized policyholders pay.[33] Since fiscal year 2002, NFIP has reported that the estimated subsidized premium rate is

[32]PricewaterhouseCoopers, *FEMA: Study of the Economic Effects of Charging Actuarially Based Premium Rates for Pre-FIRM Structures* (May 14, 1999).

[33]According to FEMA, subsidized premium rates are based on full-risk rates, and full-risk rates are based on the probability of a given level of flooding, damage estimates based on that level of flooding, and accepted actuarial principles. To determine subsidized premium rates, FEMA subtracts the total amount that it expects to collect on full-risk rate premiums from the average historical loss year target, which is the minimum amount of premium the program needs to collect to cover at least average annual losses, as determined by historical loss data. The amount remaining from this calculation is the aggregate target amount of subsidized premiums that the program needs to collect. To set individual subsidized rates, FEMA officials then consider their knowledge of flood risks, previous rate increases for various areas, and statutory limits on increases. Beginning in 2007, FEMA instituted a discounted weight for catastrophic loss years; however the Biggert-Waters Act requires that these years now be included in the calculation of the average loss year.

between 35 and 45 percent of the full-risk premium rate.[34] FEMA officials said that they did not report an estimate before the 1999 PwC report. Therefore, determining forgone premiums without these estimates would be difficult because the percentage of subsidized premium rates compared with full-risk rates may have varied considerably over time.

Although it was not possible to estimate forgone premiums since the program was established, the following provides information about the impact of subsidized premiums on the program.

- Data are not available from FEMA to estimate the forgone premiums before 2002. Using FEMA's estimated range of subsidy rates to actual premiums collected from 2002 through 2011, we conducted an analysis to estimate the premiums that could have been collected if subsidies had not existed over that period.[35] FEMA officials have clarified their estimate that 2011 subsidized premiums represented 40 percent to 45 percent of full-risk premium rates, explaining that after paying for all administrative and other expenses, the remaining premiums would cover about 40 to 45 percent of the expected average long-term annual losses.
- Premiums are used to cover not only claims, but also operating expenses and any debt. According to FEMA officials, 17 percent of forgone premiums would be needed to pay operating expenses that would increase if subsidized premiums were increased. Such expenses consist of premium taxes (about 2 to 2.5 percent of premium) and agents' commissions associated with the private insurance companies that sell and service NFIP policies (about 15 percent of premium). Therefore, about 83 percent would be available to help cover fixed expenses (which do not vary with premiums) and

[34]In its actuarial rate review for 2011, FEMA estimated that currently subsidized policy rates were between 40 and 45 percent of full-risk premium rates. See FEMA, *National Flood Insurance Program: Actuarial Rate Review* (Washington, D.C.: October 2011). Prior ranges were between 35 and 40 percent. According to FEMA officials, FEMA changed the estimated range of the percentage of full-risk premiums that subsidized policyholders pay from 35 to 40 percent to 40 to 45 percent, after gradual increases in this percentage over the last several years. However, in commenting on a draft of this report, FEMA officials informed us that this percentage was actually the portion of subsidized premiums available to pay expected average long-term annual losses.

[35]In comments on a draft of this report FEMA officials provided new information about variable expenses that could impact this estimate. GAO plans to undertake additional work to analyze the impact of these variables on our initial estimate of the financial impact of subsidized premiums on the program and report the results separately.

to pay losses. During years when losses are less than average, the program potentially generates a surplus. During higher-loss years, accumulated surplus could be used to help pay the insured flood losses that exceed that year's net premium revenue and reduce the likelihood of needing to borrow from Treasury. Therefore, additional premiums could have helped offset FEMA's need to borrow or put the agency in a better position to manage catastrophic losses or repay its debt.

- A similar number but higher percentage of policies were subsidized in the earlier years of the program, therefore, most of the program's premium revenue did not reflect the risk of flooding. In 1978 about 76 percent of policies were subsidized compared with about 20 percent in 2012. The Flood Disaster Protection Act of 1973 expanded the use of premium subsidies to encourage the purchase of flood insurance and introduced mandatory flood insurance purchase requirements in SFHAs as a condition of receipt of direct federal and federally related financial assistance related to the property. For the next 7 years, the subsidized premiums remained in effect. During this period, nearly every community with a flood hazard joined NFIP, and policies in force reached 2 million by 1979.
- The percentage of full-risk premiums that policyholders with subsidized rates paid was also lower than today. When the program began, NFIP administrators set the subsidized rates on the basis of what they considered affordable.[36] However, from 1981 through 1986, FEMA initiated a series of rate increases for all subsidized policies. The increases were intended to generate premiums at least sufficient to cover expenses and losses relative to the historical average loss year when combined with the premiums paid by policyholders with full-risk rates. Since 1986, additional rate increases have been made to bring the average program premium to a level intended to be sufficient to pay for the historical average loss year and have additional funds available to service its debt to Treasury.

Mandated Information on Claims and Premiums Associated with Subsidized Policies

As mandated in the Biggert-Waters Act, we also calculated the claims and premiums attributable to all policies that received subsidies (historically subsidized policies) since 1978 and to policies with characteristics similar to remaining subsidized policies (remaining subsidized policies). While the difference between claims and premiums is not a meaningful measure of the costs of subsidies because premiums

[36] GAO-09-12.

are used to pay not only claims but other costs of administering the program, they provide additional descriptive information. Moreover, because flooding is a highly variable event, with losses varying widely from year to year, even analysis of the decades of historical data available could lead to unreliable conclusions about actual flood risks. Based on our analysis of NFIP claims data, we calculated the amount of claims attributable to historically subsidized policies from 1978 through 2011 to have been $24.1 billion, of which $15.2 billion is attributable to remaining subsidized policies. NFIP had $28.5 billion in claims for policies charged at the full-risk premium rates in the same time period. Based on data provided by FEMA on all subsidized premiums, we calculated the amount of premiums collected for all historically subsidized policies from 1978 through 2011 to have been $26.2 billion, of which $15.7 billion is attributable to remaining subsidized policies. Comparatively, FEMA collected $33.7 billion in premiums for policies with full-risk premium rates for the same time period.

FEMA Lacks the Information Needed to Establish Full-Risk Rates That Reflect Risk of Flooding for Remaining Subsidized Policies

FEMA generally lacks information to establish full-risk rates that reflect flood risk for active policies that no longer qualify for subsidies as a result of the Biggert-Waters Act and also lacks a plan for proactively obtaining such information.[37] The act requires FEMA to phase in full-risk rates on these policies. Federal internal control standards state that agencies should identify and analyze risks associated with achieving program objectives, and use this information as a basis for developing a plan for mitigating the risks. In addition, these standards state that agencies should identify and obtain relevant and needed data to be able to meet program goals.

FEMA does not have key information used in determining full-risk rates from all policyholders. According to FEMA officials, not all policyholders have elevation certificates, which document their property's risk of flooding.[38] Information about elevation is critical for determining the location of a property in relation to the risk of flooding and is a key element in establishing premium rates. For instance, FEMA uses

[37] Pub. L. No. 112-141, §100205 (a)(1).

[38] Surveyors calculate the elevation of the first-level of a structure in relation to the expected flood level, or base flood elevation. According to FEMA, obtaining such a certificate typically would cost a policyholder from $500 to $2,000 or more.

elevation as one of the factors in its model to set full-risk rates for buildings constructed after the publication of a community's FIRM.[39] FEMA officials said that although a variety of factors, such as occupancy status and number of floors, are used to determine these rates, the elevation of the building is the most important factor. FEMA also uses elevation certificates as administrative tools.[40] Elevation certificates are required for some properties, but optional for others. For example, communities participating in NFIP must obtain the elevation information for all new and substantially improved structures.[41] In addition, FEMA requires elevation certificates to determine rates for post-FIRM buildings located in high-risk areas, the A and V zones. However, an elevation certificate generally has not been required for pre-FIRM buildings that previously received subsidized rates because information about elevation was not used in setting subsidized rates.[42] According to NFIP data, property elevations relative to the base flood elevation are unknown for 97 percent of both the 1.15 million historically subsidized policies and the more than 700,000 remaining subsidized policies in SFHAs.[43] As of October 2013, FEMA is requiring applicants for new policies on pre-FIRM properties that previously received subsidized rates and property owners whose coverage has lapsed to provide elevation certificates.

[39] This method of estimating flood damage is based on the hydrologic model, which is a static or dynamic representation of the process that affects surface water runoff. Hydrologic models are used to describe present conditions or predict future behavior of the hydrologic regime at a specific area of land that "caches" and "releases" surface water runoff (referred to as catchment). Examples of hydrologic model inputs are precipitation and snow melt and examples of outputs are stream discharge and evapotranspiration. NFIP's use of the hydrologic model to estimate loss exposure in flood-prone areas also incorporates other relevant factors, such as the building's location, construction, and elevation relative to expected flood levels.

[40] FEMA also uses the elevation certificate to document elevation information necessary to ensure compliance with community floodplain management regulations and to support requests for revisions of FIRMs.

[41] Under NFIP, communities are required to obtain the elevation of the lowest floor (including basement) of all new and substantially improved structures and maintain a record of all such information [44 C.F.R. § 60.3(b)(5)].

[42] An elevation certificate may be required if the pre-FIRM building is being rated under the optional post-FIRM flood insurance rules. About half of the older pre-FIRM buildings insured by NFIP have documented their compliance with new construction standards and pay full-risk rates.

[43] More than 99 percent of the remaining subsidized policies are located in SFHAs.

FEMA is phasing-in rate increases for other policyholders who no longer qualify for subsidies and is relying on policyholders to voluntarily provide elevation certificates. With the 1999 PwC report as a basis for an estimate of the full-risk rate for subsidized policies, FEMA officials said they have been using the assumption that subsidized rates are about half of the full-risk rates and have begun implementing premium increases of at least 100 percent for all active policies that are having their subsidies eliminated. According to FEMA, they will phase in these increases at 25 percent per year, consistent with the act, for several years until the rates reach a specific level or until policyholders supply an elevation certificate that indicates the property's risk, allowing FEMA to determine the full-risk rate. If policyholders voluntarily obtain an elevation certificate that shows that their risk is lower, they may be able to qualify for lower rates or it may not take as many years of rate increases to reach the full-risk rate. However, policyholders at higher risks could be subject to even higher rates. According to FEMA officials, it will take several years for previously subsidized policies to reach a full-risk rate and the agency will communicate to policyholders to encourage them to purchase elevation certificates to determine their actual flood risk. For example, FEMA has posted information on its website about program changes as a result of the Biggert-Waters Act and the importance of obtaining elevation certificates.

Although subsidized policies have been identified as a risk to the program because of the financial drain they represent, FEMA does not have a plan to expeditiously and proactively obtain the information needed to set full-risk rates for all of them. Instead, FEMA will rely on certain policyholders to voluntarily obtain elevation certificates. Those at lower risk levels have an incentive to do so because they can qualify for lower rates. However, policyholders with higher risk levels have a disincentive to voluntarily obtain an elevation certificate because they could end up paying an even higher premium. Without a plan to expeditiously obtain property-level elevation information, FEMA will continue to lack basic information needed to accurately determine flood risk and will continue to base full-risk rate increases for previously subsidized policies on limited estimates. As a result, FEMA's phased-in rates for previously subsidized policies still may not reflect a property's full risk of flooding, with some policyholders paying premiums that are below and others paying premiums that exceed full-risk rates. As we have previously found, not accurately identifying the actual risk of flooding increases the likelihood that premiums may not be adequate and adds to concerns about NFIP's financial stability.[44]

Several Options Exist for Reducing the Financial Impact of Remaining Subsidized Policies

Through our previous work as well as interviews we conducted and literature we reviewed for this report, we identified three broad options that could help address NFIP's financial situation: (1) adjust the pace of the elimination of subsidies, (2) target assistance or remaining subsidies by the financial need of property owners, and (3) increase mitigation efforts. In prior work, we discussed similar options for addressing the impact of subsidized policies and the work we conducted for this report confirmed that, with some modifications to reflect the changes from the Biggert-Waters Act, these were still generally the prevailing options.[45] In addition, our previous and current work have shown that each of the options has advantages and disadvantages in terms of the impact on the program's public policy goals and would involve trade-offs that would have to be weighed. For example, charging premium rates that fully reflect the risk of flooding could help improve the financial condition of NFIP and limit taxpayer costs before and after a disaster. However, eliminating or reducing subsidized policies could have unintended consequences, such as increasing premium rates to the point that flood insurance is no longer affordable for some policyholders and potential declines in program participation.

Adjust the Pace of the Elimination of Subsidies

Accelerating the elimination of subsidies could improve NFIP's financial stability by more quickly increasing the number of policies that more accurately reflect the risk of flooding.[46] NFIP would be able to charge more policyholders premium rates that more closely reflect the losses that FEMA expected to incur, contributing to the financial health of NFIP. Insurance industry representatives and floodplain managers we interviewed noted that they supported reducing the number of subsidized policies and moving to full-risk rates. For example, a representative of an insurance industry association said that the provisions in the Biggert-Waters Act for the elimination of subsidies and rate increases are only a partial step and that implementing these provisions would help people better understand their risk of flooding and related costs for the area

[44]See GAO, *High-Risk Series: An Update*, GAO-13-283 (Washington, D.C.: Feb. 2013).

[45]GAO-09-20.

[46]GAO-09-20.

where they lived. Stakeholders also noted that the threat of increased premium rates would encourage some policyholders affected by Superstorm Sandy to undertake mitigation efforts as they repaired their properties.

Although accelerating the elimination of subsidies could strengthen the financial solvency of the program, it also entails trade-offs and unintended consequences. For example, according to FEMA estimates, the elimination of subsidies for pre-FIRM properties would on average more than double these policyholders' premium rates, raising concerns about the affordability of the coverage and participation in the program. Higher premium rates might result in reduced participation in NFIP over time as people either decide to drop their policies or are priced out of the market, according to FEMA officials and insurance industry stakeholders we interviewed. The 1999 PwC study estimated that, for communities most likely to experience a decrease in property values if subsidies were immediately eliminated, on average 50 percent of policyholders might cancel their coverage. It is too soon to tell the long-term impacts of the elimination of subsidies that went into effect in 2013. Even reducing, rather than eliminating, subsidies could increase the financial burden on some existing policyholders—particularly low-income policyholders—and could lead to some of them deciding to leave the program. As a result, if owners of pre-FIRM properties, which have relatively high flood losses, cancelled their insurance policies, the federal government—and ultimately taxpayers—could face increased costs in the form of FEMA disaster assistance grants to these individuals.[47] However, according to a recent study, a large proportion of disaster assistance is provided to states, versus directly to individuals, and the assistance provided to individuals via grants and low-interest loans is fairly limited in size.[48] An additional trade-off associated with making immediate increases to premium rates is resistance from local communities. Stakeholders we interviewed further noted that increased insurance costs might make some properties more difficult to sell, particularly pre-FIRM properties in older, inland communities at high risk of flooding.

[47] Owners of properties located in SFHAs must participate in NFIP to be eligible to receive federal assistance following a presidentially declared disaster event.

[48] See Erwann Michel-Kerjan, "*Have We Entered an Ever-Growing Cycle on Government Disaster Relief?*" The Wharton School, University of Pennsylvania (Mar. 15, 2013).

Delaying the elimination of subsidized policies could address stakeholder concerns about the affordability of flood insurance and the time frames in the Biggert-Waters Act for implementing full-risk rates, but also has trade-offs. For example, while stakeholders we interviewed supported provisions of the act to reduce the number of subsidized policies and moving to full-risk rates, they said that the time frames in the act were aggressive and could be burdensome for low-income policyholders. They also stated that more gradual increases for certain policyholders could keep policies more affordable. They noted there have been proposals to delay the elimination of subsidies and phasing in of full-risk rates. However, delaying the elimination of subsidies would continue to expose the federal government to increased financial risk. And, as previously noted, not charging full-risk rates contributes to FEMA's ongoing management challenges in maintaining the financial stability of NFIP. NFIP has been on our high-risk list since 2006 because of concerns about its long-term financial solvency and management issues.[49] While Congress and FEMA intended that, insofar as practicable, NFIP be funded with premiums collected from policyholders, the program was, by design, not actuarially sound.

Target Assistance or Remaining Subsidies Based on Financial Need of Property Owner

Targeting assistance, based on financial need, could help ensure that only those in need receive subsidies, with the rest paying full-risk rates. This assistance could take several forms, including direct assistance through NFIP, tax credits, grants, or vouchers. For example, other federal programs have targeted subsidies through means tests or other methods. Such an approach could help ensure that those needing the subsidy would have access to it and retain their coverage. Alternatively, stakeholders we interviewed for this report noted that FEMA could replace the subsidies with vouchers based on financial need to offset higher premiums. For example, the Department of Housing and Urban Development's Housing Choice Voucher program is administered by public housing agencies that collect information on applicants' income and assets to determine eligibility and voucher amounts.[50] Similar data on flood insurance policyholders could be collected to assess need, determine eligibility, and provide appropriate amounts of financial assistance to families that otherwise could not afford their flood insurance premiums.

[49] GAO-13-359T.

[50] 24 C.F.R. Part 982.

According to industry stakeholders we interviewed, targeting assistance based on financial need would help make the planned phased-in premium increases more affordable. In a recent paper on flood insurance affordability, the Association of State Floodplain Managers (ASFPM) suggested that a flood insurance voucher program could be developed for low-income policyholders who may not be able to afford the rate increases or for those who might need time to adjust to premium increases.[51] ASFPM's paper also noted that, while the premium rate increases required by the Biggert-Waters Act will improve the financial stability of NFIP, those increases could have a significant impact on flood insurance affordability for low-income policyholders. In particular, the ASFPM paper states that assistance will be necessary for some policyholders to help them transition to either full-risk rates, or to mitigate their properties, otherwise some property owners might not be able to afford to remain in their homes. Other insurance industry representatives and stakeholders have also cited affordability concerns and suggested that as full-risk rates were phased in, assistance for low-income individuals could be provided through a voucher system or program based on financial need. A provision of the act requires FEMA to study NFIP participation and affordability issues, including offering vouchers based on income.[52] According to FEMA officials, as of May 31, 2013, FEMA has consulted with the National Academy of Sciences about determining how to undertake this study.

As previously discussed, our comparison of characteristics (such as median income and median home values) associated with remaining subsidized and nonsubsidized policies indicates that applying full-risk rates may be overly burdensome for some property owners and not for others. For example, we found a higher percentage of subsidized policies in both counties with lower and very high incomes, indicating that in certain areas, some subsidized policyholders may find higher flood insurance rates difficult to afford, while those who were located in higher-income areas may be able to afford premium increases.

However, it could be challenging for FEMA to develop and administer such an assistance program in the midst of ongoing management

[51] See Association of State Floodplain Mangers, Inc., "*Flood Insurance Affordability*" (Madison, Wis.: Apr. 26, 2013).

[52] Pub. L. No. 112-141, §100236.

challenges. Specifically, we have previously found that FEMA has faced significant management challenges in areas that affect NFIP, including strategic and human capital planning; collaboration among offices; and record, financial, and acquisition management.[53] In addition, in previous work we found that FEMA has faced challenges modernizing NFIP's insurance policy and claims management system. Implementing a financial assistance program would require FEMA to plan and develop new processes. Representatives from a national insurance professional organization we interviewed for this report stated that it would be difficult for FEMA to administer an assistance program and ensure that an evaluation for assistance was done consistently. In addition, they said that to administer an assistance program such as vouchers, tax credits, or grants through the Write-Your-Own companies (insurance companies that sell and service flood insurance for NFIP), a process would be needed to ensure that means-testing is evaluated and administered consistently. They also suggested that it would be easier to administer a program if all policyholders were charged a full-risk rate, with a separate process that would allow them to apply for assistance, based on financial need.

Increase Mitigation Efforts

A third option to address the financial impact of subsidized premium rates on NFIP would be to substantially expand mitigation efforts to ensure that more homes were better protected from flooding, including making mitigation mandatory. Mitigation efforts such as elevation, relocation, and demolition can be used to help reduce or eliminate the long-term risk of flood damage to structures insured by NFIP. However, mitigation of pre-FIRM properties is voluntary unless a property has been substantially damaged or the owner undertook substantial improvement.[54]

We previously reported that mitigation efforts could be targeted to properties that have been most costly to the program, such as those with "repetitive losses."[55] In addition, we noted in our prior work that this would have the advantage of producing savings for policyholders and for federal taxpayers through reduced flood insurance losses and federal disaster

[53]GAO-11-297.

[54]If the cost of restoring a flood-damaged structure to its predamage condition or renovating an insured structure is equal to or greater than 50 percent of that structure's market value before the damage or renovation, the structure must be mitigated and meet other applicable local ordinance requirements. See 44 C.F.R. §59.1 and 60.3(c)(2).

[55]GAO-09-20.

assistance. While the Biggert-Waters Act eliminated subsidies for severe repetitive loss properties and for prospective policyholders who refuse to accept any offer for mitigation assistance (including an offer to relocate) following a major disaster, properties not built to meet a community's flood resistant requirements or in the highest-risk zones could face more severe damages in the event of a flood.[56] Insurance industry stakeholders agreed that mitigation could be used to reduce future financial risk for NFIP.

Stakeholders we spoke to for this report also commented that since such mitigation measures often are done at the community level, offering community-based policies could help encourage more mitigation. This is consistent with our prior work in which local officials generally support increased mitigation efforts.[57] Industry stakeholders also commented that incorporating community-based flood insurance into NFIP could help leverage community resources for mitigation projects that would benefit the entire community, rather than individual structures. For example, floodplain mangers noted that with a community-based policy, the local unit of government could assess fees on all properties benefitting from community mitigation measures. In addition, because the premium rate would be on a community versus structure basis, the community, not the property owner, generally would make development or neighborhood-type decisions that either increased or decreased risk in the community.

Disadvantages associated with mitigation as an option to reduce the financial impact of the subsidized policies include the expense to NFIP, taxpayers, and communities. For example, implementing mitigation measures for tens of thousands of properties that continue to receive subsidized rates could take a number of years to complete, which could have an on-going risk to NFIP's financial health. We have previously reported that increasing mitigation would be costly and require increased funding. Furthermore, we found in our past and current work that buyouts and relocations would be more costly in certain areas of the country and in some cases the cost for mitigating older structures might be prohibitive. The effectiveness of mitigation efforts could be limited by FEMA's reliance on local communities with varying resources. For example, not all

[56] Pub. L. No. 112-141, §100205, classified as amended at 42 U.S.C. 4014(g)(3) and (4).

[57] GAO-09-20.

communities have the staff or resources to fully carry out mitigation, meet cost-sharing requirements, and enforce compliance.

As we reported in 2008, even when federal funds are made available to a community and property owners are interested in mitigating their properties, property owners still may have to pay a portion of the mitigation expenses, which could discourage participation in mitigation efforts.[58] In interviews for this report, stakeholders said that mitigation was expensive and that as premiums are increased to full-risk rates, some means of assistance would be helpful for policyholders who may have difficulty paying for mitigation efforts. Mitigation costs would have to be weighed against mitigation benefits (possible savings from a decrease in flood damage).

In addition, certain types of mitigation, such as relocation or demolition, might be met with resistance by communities that rely on those properties for tax revenues, such as coastal communities with significant development in areas prone to flooding. Furthermore, mitigation activities are often constrained by conflicting local interests, cost concerns, and a lack of public awareness of the risks of natural hazards and the importance of mitigation. Communities' economic interests often can conflict with long-term hazard mitigation goals. For example, a community with a goal of economic growth might allow development to occur in hazard-prone areas (along the coast or in floodplains).

Our analysis indicates that the three options discussed above are not mutually exclusive and may be used together to reduce the financial impact of subsidized policies on NFIP. For example, accelerating the elimination of subsidies could be done in conjunction with targeting assistance to only those policyholders who need help to retain their flood insurance—thus advancing the goal of strengthening the financial solvency of NFIP and addressing affordability concerns for low-income policyholders. In addition, FEMA may be able to build on its existing mitigation efforts and target assistance for mitigation efforts to those policyholders who need financial assistance. The way in which an option is implemented, such as more aggressively or gradually, also can produce different effects in terms of policy goals and thus change the advantages and disadvantages (see table 6).

[58] GAO-09-20.

Table 6: Advantages and Disadvantages of Options for Reducing the Financial Impact of Remaining Subsidized Premium Rate Policies

Option	Advantages	Disadvantages
Adjust the pace of reducing or eliminating subsidies	• Accelerating the pace of reducing or eliminating subsidies would more quickly charge more property owners premium rates that more accurately reflect the risk of flood loss (decrease the inventory of subsidized properties) • Higher premium rates could motivate property owners to undertake mitigation to reduce their rates • Would provide more accurate information to homeowners about their risk of flooding	• Accelerating the pace of reducing or eliminating subsidies could reduce program participation, both at the policyholder and community levels, potentially resulting in increased costs to taxpayers of providing disaster assistance for catastrophic events • Could be resisted by local communities because of potential negative impact on residents and local economy • Many policyholders of subsidized properties do not have elevation certificates to determine their risk level.
Base subsidies on the financial need of policyholder	• Would charge more property owners premium rates that more accurately reflect the risk of flood loss (decrease the inventory of subsidized properties) • Would continue to benefit those in greatest financial need by keeping rates affordable • Higher premium rates for some could motivate property owners to undertake mitigation to reduce their rates	• Increased premium rates for some could reduce program participation • Requiring property owners to apply for subsidies could reduce participation for those in greatest need • Implementing a new program in the midst of existing management and oversight challenges could pose additional challenges for FEMA and the insurance companies that sell and service flood insurance.
Increase mitigation efforts	• Could reduce flood losses, especially by focusing mitigation efforts on properties with repetitive losses • Could increase the number of property owners paying full-risk rates by denying subsidized rates to those who refuse mitigation offers • Could receive support from local communities because of potential positive effect of mitigation on property values	• Extensive mitigation efforts could be expensive for taxpayers • Extensive mitigation efforts could take years to complete and subsidized rates would continue to negatively affect NFIP's financial health in the interim • Effectiveness of mitigation efforts could be limited by heavy reliance on local communities with varying resources

Sources: GAO, insurance experts, FEMA, and other stakeholders.

Conclusions

While FEMA has taken initial steps to eliminate subsidies for various types of properties in accordance with the Biggert-Waters Act requirements, eliminating the more than 700,000 additional policies that continue to receive subsidies will take many years to accomplish. Subsidies on some policies will be eliminated as properties are sold or if coverage lapses, but FEMA has some data limitations and implementation issues to resolve before other subsidies identified in the act can be eliminated. With some efforts under way, FEMA has much work ahead of it in planning and executing implementation of the changes in the act as well as effectively managing NFIP.

Although FEMA has information on premiums and claims paid for subsidized policies over time, it does not have the information needed to determine the appropriate premium amounts policyholders should pay to reflect the full level of risk for floods. To phase out and eventually eliminate subsidies and revise rates over time, FEMA will need information on the relative risk of flooding and property elevations (elevation certificates), which generally had not been required for subsidized policies prior to the Biggert-Waters Act. The act requires FEMA to phase in full-risk rates on policies that previously received subsidies. According to federal internal control standards, agencies should identify and analyze risks associated with achieving program objectives, and use this information as a basis for developing a plan for mitigating the risks and obtaining needed information. Going forward, FEMA will require new policyholders and those whose coverage has lapsed to provide elevation information when renewing or obtaining new policies; however, FEMA will rely on other policyholders who previously received subsidized rates to voluntarily provide this information. As FEMA continues to implement the requirements of the act to charge full-risk rates, the agency plans to assume that all subsidized policies pay about half of the full-risk premium and has begun phasing-in rate increases based on this factor for all active policies that are having their subsidies removed. Without a plan to require all policyholders to obtain elevation certificates to accurately document their property elevations and relative risk of flooding, FEMA will lack information that is key to determining appropriate full-risk rate premiums. As a result, the rates that FEMA plans to implement may not adequately reflect a property's actual flood risk, and some policyholders may be charged too much and some too little for their premiums.

Recommendation for Executive Action

To establish full-risk rates for properties with previously subsidized rates that reflect their risk for flooding, we recommend that the Secretary of the Department of Homeland Security (DHS) direct the FEMA Administrator to develop and implement a plan, including a timeline, to obtain needed elevation information as soon as practicable.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS for its review and comment. DHS provided written comments that are presented in appendix III. The letter noted that the department concurred with our recommendation to develop and implement a plan to obtain elevation information from previously subsidized policyholders. The letter stated that FEMA will evaluate the appropriate approach for obtaining or requiring the submittal of this information. In particular, the letter noted that although obtaining this information cost-effectively presents significant challenges, FEMA will explore technological advancements and engage with industry to determine the availability of technology, building information data, readily available elevation data, and current flood hazard data that could be used to implement the recommendation. FEMA also provided technical comments, which we have incorporated into the report, as appropriate.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Homeland Security. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you have any questions about this report, please contact me at (202) 512-8678 or cackleya@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Alicia Puente Cackley

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Appendix I: Objectives, Scope, and Methodology

The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) mandated that GAO conduct a number of studies, including this study on the properties that continue to receive subsidized rates after the implementation of the act and options to further reduce these subsidies.[1] This report discusses (1) the number, location, and financial characteristics of properties that continue to receive subsidized rates compared with full-risk rate properties, (2) information needed to estimate the historic financial impact of subsidies and establish rates that reflect the risk of flooding on properties with previously subsidized rates, and (3) options to reduce the financial impact of remaining subsidized properties.

Although the Biggert-Waters Act mandated that GAO report on certain characteristics of the remaining subsidized policies and properties, the National Flood Insurance Program (NFIP) databases do not contain information to address several elements listed in the act. Therefore, to the extent possible, we developed alternative methodologies to address the elements of the act.

Number, Location, and Financial Characteristics of Properties That Continue to Receive Subsidized Rates Compared with Full-Risk Rate Properties

To provide information on the number and location of NFIP-insured properties that would continue to receive subsidized premium rates, we analyzed data from NFIP's policy and repetitive loss databases as of June 30, 2012. We applied the Federal Emergency Management Agency's (FEMA) algorithm to determine which policies were subsidized, and applied FEMA's interpretation of the provisions in the Biggert-Waters Act that eliminate subsidies to determine which policies would retain their subsidies.[2] We also analyzed NFIP's legislative history and relied on FEMA's implementation of legislative requirements authorizing subsidized rates for certain properties in high-risk locations.

To determine the fair market value of properties that would continue to receive subsidized premium rates, we used other NFIP data and publicly available information as indicators of value because the fair market values required by the act were not available in NFIP's databases. We used three indicators of home value, (1) NFIP policy-level coverage

[1]Pub. L. No. 112-141, §100231.

[2]We used the NFIP data as of June 30, 2012, as it was the current data at the passage of the Biggert-Waters Act. To determine primary residence, we used NFIP principal residence field. We included all nonresidential policies as business policies.

amounts, (2) 2007 through 2011 5-year American Community Survey (ACS) county-level data on median home values, and (3) January 2013, Zillow city-level median home value index within case study counties.[3] For consistency in our message, we compared all the indicators at the county-level. To place NFIP policies in counties, we used ZIP code information contained in the NFIP policy file as of June 30, 2012, and matched those data with U.S. Postal Service and Department of Housing and Urban Development ZIP code to county data (as of December 2011). For ZIP codes that crossed county borders, we assigned policies proportionally to the counties based on the fields available in the ZIP code to county file.

We aggregated the total number of policies and remaining subsidized policies for all counties, and selected 351 counties for our analysis that contained the majority of the policies. We selected all counties with 500 or more remaining subsidized policies for single-unit, primary residences (247 counties). We also included the five counties in each state and Puerto Rico with the most remaining subsidized policies for single-unit primary residences, regardless of the total number in the county, to better ensure a comprehensive national representation. Accordingly, the 351 counties we selected represent 78 percent of all remaining subsidized policies nationwide, 77 percent of all remaining subsidized policies for single-unit primary residences, and 77 percent of all NFIP policies. As more than 99 percent of remaining subsidized policies were in Special Flood Hazard Areas (SFHA), we limited our comparison with nonsubsidized policies to those for single-unit primary residences in SFHAs.

We used NFIP policy data as of June 30, 2012, on coverage amounts as the first indicator of home value. To determine how building coverage amounts compared between remaining subsidized and nonsubsidized policies, we categorized NFIP building coverage amounts using less than $100,000, $100,000-$149,999, $150,000-$199,999, $200,000-$249,999, and $250,000, which is the maximum coverage for residential units. We compared the percentage of policies of each type within each category of coverage at the county level for the selected counties. We also conducted

[3]The American Community Survey is a nationwide continuous survey conducted by the U.S. Census Bureau. The estimates are based on multiyear period estimates for 2007 through 2011 and should not be interpreted as estimates for any particular year in the period. Zillow is a real estate website that includes estimated market values for houses.

this analysis using flood zones, comparing the coverage amounts for A-zone and V-zone policies separately. (The A and V flood zones represent areas at high risk for flooding, and V zones also indicate coastal areas.) Coverage amount as an indicator for home value is limited because NFIP has a maximum building coverage amount of $250,000 per residential unit. Additionally, the perceived flood risk and cost of coverage could affect the coverage amount. However, coverage amount can give an indication of a property's value relative to other properties.

As a second indicator of home value, we used 2007 through 2011 ACS 5-year county-level estimates for median home values (known as B25077) for all counties in the United States and also included the District of Columbia and Puerto Rico. We included Puerto Rico because of its relatively large number of NFIP policies. We used 5-year data because other ACS data sets did not contain data for all the 351 selected counties. Using county median home value, we ranked all counties and determined the deciles for the 351 selected counties. We compared the percentage of remaining subsidized with nonsubsidized policies from the selected counties in each decile. Because these data are at the county level, areas within the county of relatively high or low home values are indistinguishable. We also analyzed the ACS and NFIP coverage data together, at the county level.

As a third indicator of home value, we used Zillow city-level median home value data as of January 2013, within five selected counties. For the purposes of our county case study analysis, we selected the Zillow Home Value Index because it was publicly available; covered more housing units at the city level than other housing indices; was estimated at a smaller geographic region; and only included nonforeclosure housing units. We judgmentally selected five case study counties and compared data at the city level within the county to provide more detailed illustrations of how home values for properties that continue to receive subsidies compare with those that pay full-risk rates. These cases are not projectable to all counties. We selected our case study counties based on the number of relevant NFIP policies, their location, and the reliability of the data for the county. Specifically, we selected counties with at least 1,000 remaining subsidized policies and nonsubsidized policies for single-unit primary residences. We selected one county from each of the four states with the most remaining subsidized policies. We selected Pinellas County, Florida; Los Angeles County, California; and Ocean County, New Jersey; however, the Zillow data for Louisiana did not meet our level of reliability and was eliminated. As Pinellas County is on the Gulf of Mexico, Los Angeles County is on the Pacific Ocean, and Ocean County is on the

Atlantic Ocean, we chose the other two counties to represent inland flooding—Cook County, Illinois, and Pima County, Arizona. The Zillow information for these counties met our criteria for data reliability. For each county, we determined which NFIP policies may be located in the county based on ZIP code. Because the NFIP city name was not consistently entered, two analysts independently matched the NFIP policy city names to Zillow city names within the county. A third analyst served as the mediator for differences using alternative location information. Within each county, we ranked the cities by median home value and distributed them into quartiles. We compared the number and percentage of remaining subsidized policies with the nonsubsidized policies in the cities in each quartile. Additionally, for each case study county, we reviewed the results from the NFIP coverage and ACS analyses within the county.

Because owner income data were not available in NFIP's databases, we analyzed 2007 through 2011 ACS 5-year data as an indicator of income levels of owners of remaining subsidized properties.[4] We used 5-year, county-level data on median household incomes (B19013) for all counties in the United States, the District of Columbia, and Puerto Rico. Using the median household income data, we ranked all counties and determined the deciles for the 351 selected counties. We compared the percentage of remaining subsidized policies with nonsubsidized policies in SFHAs from the selected counties in each decile. Because these data are at the county level, areas within the county of relatively high or low household incomes are indistinguishable. We also analyzed the ACS median home value and median household income data together, at the county level.

Because consistent, nationwide aggregate data on sales prices for each property covered by a remaining subsidized pre-Flood Insurance Rate Map (FIRM) policy since 1968 were not available from NFIP or other sources, we determined that the home value analysis was sufficiently similar to provide an indication of sales prices to respond to this study element.

We also used NFIP policy fiscal year-end data from 2002 through 2012 to estimate the potential annual rate of decline in the number of remaining subsidized policies over time. Consistent, nationwide aggregate data on sales dates for each pre-FIRM property since 1968 were not available

[4]We were unable to determine additional indicators of income level.

from NFIP or other sources. We compared sequential years of policy data to determine whether each policy with the characteristics of a remaining subsidized policy continued to have coverage. We first matched company and policy data and if no match was found, matched on owner name.[5] If a policy in the first year failed to match by either method, we assumed that the policy no longer had coverage. We estimated the annual rate of decline for 10 sequential year pairs. We compared our results with a recent NFIP policy tenure study by calculating the decline rate from the reported tenure rate. We estimated the number of remaining subsidized policies over a 30-year period given the different annual decline rates.

Because data were not available from NFIP on the number of times each pre-FIRM property had been sold, we determined that the policy decline rate analysis was sufficiently similar to provide an indication of extent of ownership or length of time policies remained in the program to respond to this study element.

Additionally, because data were not available from NFIP's databases on the extent to which pre-FIRM properties are currently owned by the same owners as at the time of the original NFIP rate map, we determined that the policy decline rate analysis was sufficiently similar to provide an indication of extent of ownership or length of time policies remained in the program to respond to this study element.

Estimated Historic Financial Impact of Subsidized Properties on NFIP

To estimate the financial impact, or cost, of subsidized properties to NFIP, we attempted to calculate forgone premiums—lost revenue to the program in premiums—due to subsidies. Because data on elevations of NFIP subsidized properties were not available to determine the total forgone premiums from subsidized policies, we used FEMA's estimates of the subsidy rate from 2002 through 2011 to estimate a range of forgone premiums attributable to subsidized properties in this period. We limited our analysis to 2002 through 2011 because FEMA did not estimate subsidy rates prior to 2002. Lacking the information to calculate the ranges associated with the premiums that would have been collected, we made assumptions based on limited historical information from FEMA, including the annual Actuarial Rate Reviews from 2002 through 2011,

[5] We performed the match on last name except when data were missing in the last name field. In these cases, we performed the match on the first name.

which state that subsidized premiums were estimated to be between 35 and 45 percent of the full-risk premium (the subsidy rate). Our analysis did not adjust for potential effects on behavior (such as on program participation) or changes in operating expenses that could have occurred had historical rates not been subsidized. In addition, our analysis did not account for new information provided by FEMA officials that only a portion of subsidized premiums is available to pay for losses. We plan to analyze the impact of this new information provided by FEMA in comments on a draft of this report. We will report the methodology and results of our estimate separately. FEMA did not report such estimates from 1978 through 2001.

For the period before 2002, we analyzed a prior GAO report, FEMA's annual actuarial review, and a PricewaterhouseCoopers study commissioned by FEMA and present qualitative information about the cost of subsidies. Additionally, because of the limited historical program data from FEMA, developing a sufficiently reliable year-by-year or state-by-state estimate of cost to NFIP as a result of remaining subsidized policies is not possible.

To estimate the total losses incurred by subsidized properties since the establishment of NFIP and compare these with the total losses incurred by all structures charged a nonsubsidized premium rate, we analyzed NFIP claims database as of June 30, 2012, to determine total losses attributable to remaining subsidized and nonsubsidized policies. Data were not available before 2002 that would allow us to determine whether a policy had the characteristics of a remaining subsidized policy. For years prior to 2002, we estimated the proportion of claims for previously subsidized policies that were attributable to remaining subsidized policies, based on the average proportion in the claims data in the latest 10 years.

To determine the premium income collected by NFIP as a result of subsidized policies, compared with premium income collected from properties charged a nonsubsidized rate, we analyzed annual NFIP premium data and data broken out by subsidy to determine the annual premiums of remaining subsidized and nonsubsidized policies. We estimated the proportion of previously subsidized premiums attributable to remaining subsidized policies based on the average proportion in the latest 10 years of NFIP policy data.

Options to Reduce the Financial Impact of Remaining Subsidized Properties

To determine the options to reduce the financial impact of remaining properties with subsidized policies, we analyzed NFIP's legislative history and reviewed FEMA documents as well as documents from insurance industry organizations and academic institutions to gather information on options to eliminate or reduce the financial impact of subsidized policies on NFIP. In addition, we interviewed NFIP officials and representatives of insurance industry organizations and floodplain managers. We also interviewed a nationally recognized academic knowledgeable about the financial impact and the public policy challenges associated with catastrophic events, and discussed previous studies on NFIP and other relevant studies on flood insurance issues.

For all data sets used we performed data testing and gathered information from issuing entities about possible data limitations. For the ACS, Zillow, and NFIP data sets, we interviewed officials on usability and reliability. We determined that each data set used was sufficiently reliable for our intended purposes.

We conducted this performance audit from September 2012 to July 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

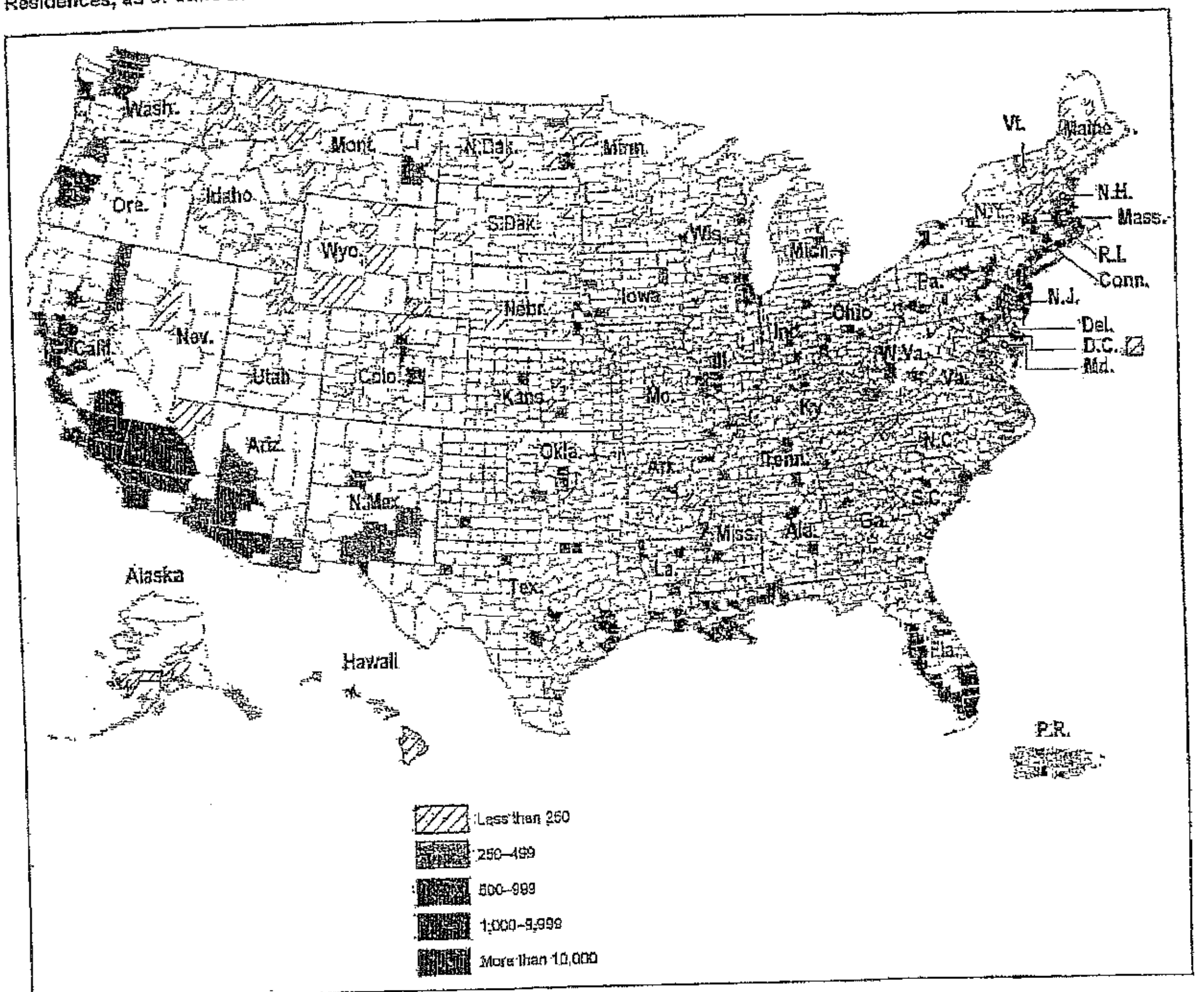
Appendix II: Comparison of Remaining Subsidized Policies with Nonsubsidized Policies in Special Flood Hazard Areas

We compared various characteristics of the remaining subsidized policies and nonsubsidized policies in SFHAs in selected counties. In addition, we conducted more detailed analysis of five counties for illustrative purposes.

Selected Counties

For our analysis of the financial characteristics of subsidized and nonsubsidized policies in SFHAs, we selected 351 counties that represented 78 percent of all remaining subsidized policies nationwide, 77 percent of all remaining subsidized policies for single-unit primary residences, and 77 percent of all NFIP policies. We selected all counties with more than 500 remaining subsidized policies for single-unit primary residences and the five counties in every state (and Puerto Rico) with the most remaining subsidized policies, regardless of number. Figure 8 shows the 351 selected counties and the number of remaining subsidized policies for single-unit primary residences under NFIP.

Figure 8: Top Five Counties per State and Counties with 500 or More Remaining Subsidized Policies for Single-Unit Primary Residences, as of June 2012

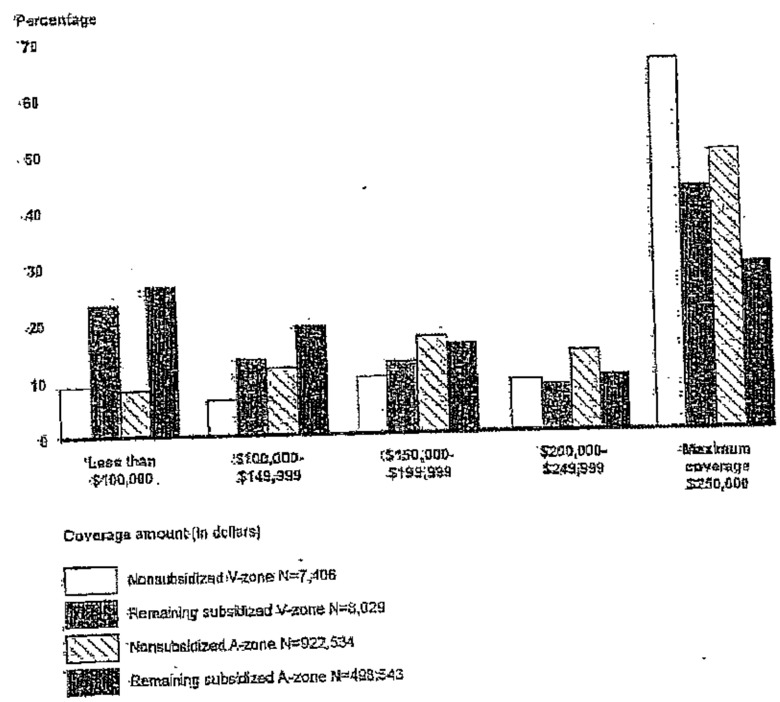


Sources: GAO analysis of FEMA data; Map Resources (map).

Analysis of Coverage Amounts by Flood Zone

For both remaining subsidized policies and nonsubsidized policies, a larger percentage of policies in V zones (coastal areas with a high risk of flooding) had the maximum coverage amount than policies in A zones (noncoastal areas with a high risk of flooding) (see fig. 9).[1] Also for both types of policies, V-zone policies represented a very small fraction of all policies in SFHAs. For example, 1.6 percent of remaining subsidized policies and 0.8 percent of nonsubsidized policies in SFHAs were in V zones.

Figure 9: Percentage of NFIP Policies for Single-Unit Primary Residences, by Flood Zone in 351 Selected Counties, as of June 2012



Source: GAO analysis of FEMA data.

Note: N represents the number of policies in the category.

[1] A and V flood zone areas comprise the SFHAs.

Combined County Median Home Value and NFIP Coverage Amount Analysis

We analyzed NFIP coverage amounts (for remaining subsidized policies and nonsubsidized policies in SFHAs for single-unit primary residences) and county median home values together and determined that higher coverage amounts were associated with higher county median home values. Counties with higher median home values had higher percentages of remaining subsidized policies and nonsubsidized policies with the NFIP maximum coverage of $250,000 than counties with lower median home values (see table 7). In addition, counties with lower median home values generally had higher percentages of remaining subsidized policies and nonsubsidized policies with lower amounts of coverage (less than $100,000) than counties with higher median home values. However, nonsubsidized policies consistently had higher amounts of coverage. Specifically, in every decile of county median home value, a larger percentage of nonsubsidized policies had the maximum amount of NFIP coverage than remaining subsidized policies. Also in every decile of county median home value, a smaller percentage of nonsubsidized policies had lower amounts of coverage (less than $100,000) than remaining subsidized policies.

Table 7: Percentage of NFIP Policies in SFHAs by Building Coverage Amount (Dollars) and County Median Home Value Ranking for Nonsubsidized and Subsidized Policies, as of June 2012

Decile	[redacted]	Remaining subsidized policies				
		Less than $100,000	$100,000 -149,999	$150,000 -249,999	$200,000 -249,999	Maximum coverage $250,000
1 (high)		11.67%	11.25%	14.67%	12.39%	50.03%
2		22.94	23.01	19.75	10.87	23.44
3		37.44	29.67	17.41	7.04	8.44
4		46.36	27.95	13.47	5.01	7.22
5		54.52	25.34	11.48	4.06	4.59
6		68.16	19.66	7.31	2.54	2.33
7		75.56	16.00	5.64	1.46	1.22
8		70.23	21.70	6.28	0.80	1.00
9		70.16	17.41	7.32	2.18	2.93
10 (low)		68.33	18.06	7.93	3.38	2.31

Source: GAO analysis of FEMA and ACS data.

Note: This analysis uses 2007 through 2011 American Community Survey (ACS) 5-year data on median home value.

Combined County Median Home Value and Median Household Income Analysis

We analyzed home value and household income indicators together and found that counties with the highest median household incomes and highest median home values had higher percentages of remaining subsidized policies than nonsubsidized policies in SFHAs. For example, 78 of the 351 selected counties were in the highest decile in both median home value and median household income (see table 8).

Table 8: Selected Counties by Median Home Value and Median Household Income Deciles, as of June 2010

		County median home value										
	Decile	1	2	3	4	5	6	7	8	9	10	Total
County median household income	1	78	7	4		1						90
	2	31	18	11	10							70
	3	7	14	10	10	7	1		1			50
	4	2	12	6	7	4	3	1			1	36
	5	2	6	6	7	7	5	2	1			36
	6	2	2	5	3	3	1	3		1		20
	7		2	1		5	1	2	2			13
	8		1		5	3	1	2	1			13
	9	1					4	1			1	7
	10		1	3	2	3	3	2		2		16
	Total	123	63	46	44	33	19	13	6	3	2	351

Source: GAO analysis of ACS and FEMA data.

Note: This analysis uses 2007 through 2011 American Community Survey (ACS) 5-year data on median home value and median household income.

About 26 percent of remaining subsidized policies compared with 7 percent of nonsubsidized policies in SFHAs were in these counties (see table 9). Remaining subsidized policies were also found in higher percentages than nonsubsidized policies in counties with lower median income and lower median household counties (lowest 6 deciles). Counties with higher median household income generally also had higher median home values, but counties with higher median home values did not always have higher median incomes.

Table 9: NFIP Policies in SFHAs in Selected Counties by Median Home Value and Median Household Income Deciles

County median household income	County median home value										
decile	1 (high)	2	3	4	5	6	7	8	9	10 (low)	Total
1 (high)	Remaining Subsidized Policies										
	133,968 (26.45%)	6,504 (1.28%)	6,220 (1.23%)		109 (0.02%)						146,801 (28.98%)
	Nonsubsidized Policies										
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	Remaining Subsidized Policies										
	56,164 (11.09%)	10,119 (2.00%)	8,476 (1.67%)	21,043 (4.15%)							95,802 (18.91%)
	Nonsubsidized Policies										
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	Remaining Subsidized Policies										
	9,422 (1.86%)	54,171 (10.69%)	5,153 (1.02%)	8,921 (1.76%)	8,703 (1.72%)	228 (0.04%)		717 (0.14%)			87,316 (17.24%)
	Nonsubsidized Policies										
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4	Remaining Subsidized Policies										
	282 (0.06%)	35,716 (7.05%)	9,636 (1.90%)	5,530 (1.09%)	2,137 (0.42%)	1,005 (0.20%)	298 (0.06%)			427 (0.08%)	55,030 (10.86%)
	Nonsubsidized Policies										
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5	Remaining Subsidized Policies										
	14,982 (2.96%)	5,269 (1.04%)	11,322 (2.23%)	4,029 (0.80%)	7,946 (1.57%)	4,681 (0.92%)	1,806 (0.36%)	190 (0.04%)			50,225 (9.91%)
	Nonsubsidized Policies										
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

County median household income decile		County median home value: 1 (high)	2	3	4	5	6	7	8	9	10 (low)	Total
6	Remaining Subsidized Policies	1,694 (0.33%)	1,054 (0.21%)	3,255 (0.64%)	2,654 (0.52%)	4,257 (0.84%)	314 (0.06%)	3,464 (0.68%)		318 (0.06%)		17,010 (3.36%)
6	Nonsubsidized Policies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7	Remaining Subsidized Policies		596 (0.12%)	127 (0.03%)		5,329 (1.05%)	523 (0.10%)	1,160 (0.23%)	351 (0.07%)			8,086 (1.60%)
7	Nonsubsidized Policies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8	Remaining Subsidized Policies		15,510 (3.06%)		2,943 (0.58%)	2,637 (0.52%)	451 (0.09%)	871 (0.17%)	241 (0.05%)			22,653 (4.47%)
8	Nonsubsidized Policies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9	Remaining Subsidized Policies	817 (0.16%)					1,401 (0.28%)	372 (0.07%)			284 (0.06%)	2,874 (0.57%)
9	Nonsubsidized Policies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10 (low)	Remaining Subsidized Policies		3,362 (0.66%)	5,288 (1.04%)	2,754 (0.54%)	2,447 (0.48%)	2,573 (0.51%)	3,016 (0.60%)		1,333 (0.26%)		20,774 (4.10%)
10 (low)	Nonsubsidized Policies	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

	County median home value										
decile	1 (high)	2	3	4	5	6	7	8	9	10 (low)	Total
Total	Remaining Subsidized Policies										
	217,329 (42.90%)	132,302 (26.12%)	49,477 (9.77%)	47,875 (9.45%)	33,565 (6.63%)	11,177 (2.21%)	10,988 (2.17%)	1,499 (0.30%)	1,651 (0.33%)	710 (0.14%)	506,572 (100.00%)
	Nonsubsidized Policies										
	322,923 (34.73%)	453,286 (48.74%)	72,220 (7.77%)	50,625 (5.44%)	18,947 (2.04%)	3,905 (0.42%)	6,742 (0.72%)	208 (0.02%)	816 (0.09%)	266 (0.03%)	929,940 (100.00%)

Source: GAO analysis of ACS and FEMA data.

Note: This analysis uses 2007 through 2011 American Community Survey (ACS) 5-year estimates on median home value and median household income.

Case Study Counties

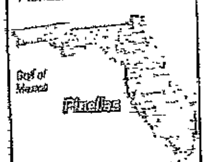
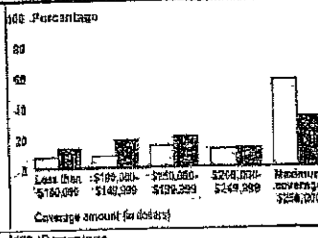
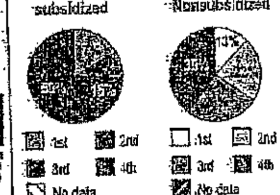
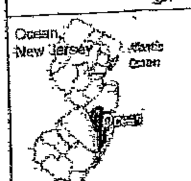
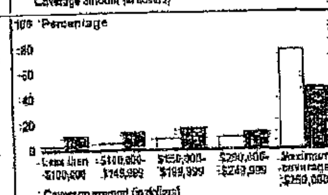
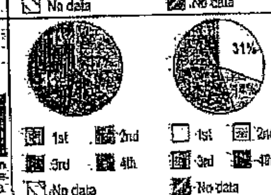
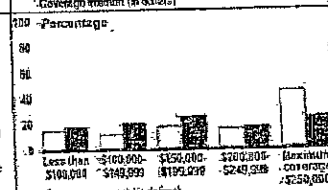
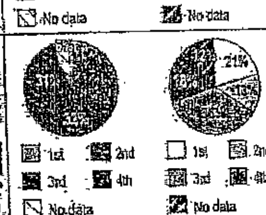
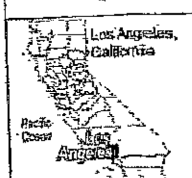
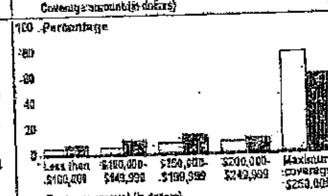
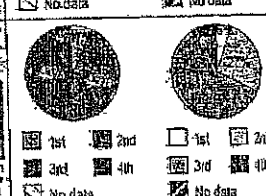
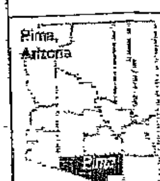
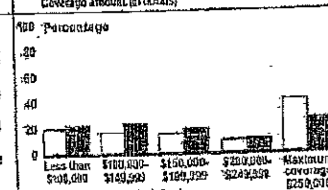
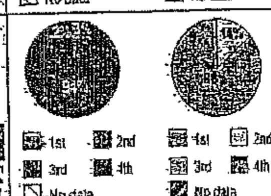
We performed five case studies to illustrate results in specific counties (see fig. 10).[2] We selected the counties based on the number of relevant NFIP policies, location, and reliability of city-level data.[3] Case studies were chosen to offer a more in-depth, within county view (how things vary across cities within select counties). We performed the NFIP coverage and median home value analyses, but also used publicly available real estate data to examine city-level median home values within the county.[4] We compared remaining subsidized and nonsubsidized policies in SFHAs (A and V flood zones are designated as SFHAs).These cases cannot be projected nationwide, and the results of our analysis from each county are independent of each other. Some of the results from these case studies matched our earlier results, and some did not.

[2]We planned to perform a sixth case study in Louisiana but the Zillow data did not meet our data reliability threshold.

[3]Appendix I more fully describes our selection criteria.

[4]We used Zillow city-level median home value index data from January 2013.

Figure 10: Case Study Counties

County	Number of cities and home value indicator	Policies in the analysis	NFIP coverage amounts SFHA (Remaining subsidized / Nonsubsidized)	City median home value quartiles (Remaining subsidized / Nonsubsidized)
Pinellas, Florida 	32 ACS decile: 2	Remaining subsidized / Nonsubsidized All 24,149 / 19,904 A-zone 23,678 / 19,497 V-zone 471 / 407		
Ocean, New Jersey 	46 ACS decile: 1	Remaining subsidized / Nonsubsidized All 10,057 / 13,052 A-zone 9,883 / 12,930 V-zone 174 / 122		
Cook, Illinois 	125 ACS decile: 1	Remaining subsidized / Nonsubsidized All 6,600 / 339 A-zone 6,600 / 339 V-zone none / none		
Los Angeles, California 	117 ACS decile: 1	Remaining subsidized / Nonsubsidized All 4,298 / 1,750 A-zone 4,201 / 1,727 V-zone 97 / 23		
Pima, Arizona 	24 ACS decile: 2	Remaining subsidized / Nonsubsidized All 1,292 / 994 A-zone 1,292 / 994 V-zone none / none		

Sources: GAO analysis of ACS, Zillow, and FEMA data.

Note: This analysis uses 2007 through 2011 American Community Survey (ACS) 5-year data on median home value, NFIP policy data as of June 30, 2012, and Zillow city-level median home value index data as of January, 2013.

Los Angeles County, California; Ocean County, New Jersey; and Cook County, Illinois; had median home values in the top 10 percent of all counties. Consistent with our earlier results for counties with the highest median home values, Cook and Los Angeles Counties had more remaining subsidized policies than nonsubsidized policies (95 percent and 71 percent of all policies for Cook County and Los Angeles County, respectively); however, Ocean County had fewer remaining subsidized policies (about 44 percent). Los Angeles and Ocean Counties had high percentages of both subsidized and nonsubsidized policies with maximum NFIP coverage and a low percentage of both types of policies at lower levels of coverage. However, Cook County had low percentages of maximum coverage policies.

Pinellas County, Florida, and Pima County, Arizona had median home values in the second decile of all counties. Although Pinellas County had many more policies than Pima County, both had slightly more remaining subsidized policies than nonsubsidized policies (55 percent and 57 percent of all policies for Pinellas County and Pima County, respectively). Pinellas County had lower percentages of policies at maximum coverage than Los Angeles and Ocean Counties but higher percentages than Pima and Cook Counties.

Consistent with our analysis of NFIP coverage amounts, all five counties had lower percentages of remaining subsidized policies at maximum building coverage than nonsubsidized policies. Ocean County had the largest difference between nonsubsidized policies and remaining subsidized policies (77 percent versus 47 percent), and Pima County had the smallest difference (41 percent versus 26 percent). All counties had a higher percentage of remaining subsidized policies than nonsubsidized policies with building coverage less than $100,000, but in some counties the differences were smaller.

The results of our analysis of the city median home value were mixed. In all counties except Los Angeles County, higher percentages of remaining subsidized policies than nonsubsidized policies were in cities in the lowest quartile of median home value, but in Cook and Pinellas Counties the differences were larger. In Pinellas County 59 percent of the remaining subsidized policies were in cities in the lowest quartile of median home value. In the counties with V-zone policies (Los Angeles, Ocean, and Pinellas) a slightly higher percentage of remaining subsidized policies were in cities in the highest quartile of median home value than nonsubsidized policies. In Ocean County more than 30 percent of remaining subsidized and nonsubsidized policies were in cities in the highest quartile, while in Pima County, very few policies of either type were in cities in this quartile. In Los Angeles and Pima counties, most policies of either type were in cities in the second and third quartiles. In Cook County policies were not concentrated in any quartile.

Additionally, fewer than 2 percent of policies were in V zones. Specifically, in the three counties with V-zone policies (Los Angeles, Ocean, and Pinellas) there were about 1,290 V-zone policies compared with about 72,000 A-zone policies. In each county, more V-zone policies were remaining subsidized policies than nonsubsidized policies. In Ocean and Los Angeles Counties, most V-zone policies of either type were in cities with median home values in the top quartile within the county. In Pinellas County the V-zone policies were located in cities in all quartiles of median home value.

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

June 28, 2013

Alicia Puente-Cackley
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-13-607, "FLOOD INSURANCE: More Information Needed on Subsidized Properties"

Dear Ms. Cackley:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's recognition of initial steps the Federal Emergency Management Agency (FEMA) has taken to eliminate subsidies for various types of properties in accordance with the Biggert-Waters Flood Insurance Reform Act of 2012. Flooding is the Nation's most common natural disaster and FEMA understands that the National Flood Insurance Program (NFIP) may be the only source of insurance against flood damage for many residents in flood-prone areas. FEMA is committed to ensuring that NFIP delivers, as fully as possible, on its mission of providing a means for homeowners, renters, and business owners to financially protect themselves from floods associated with hurricanes, tropical storms, heavy rains, and other conditions that impact the United States.

The draft report contained one recommendation with which the Department concurs. Specifically, GAO recommended that the Secretary of Homeland Security direct the FEMA Administrator to:

Recommendation: Develop and implement a plan, including a timeline, to obtain needed elevation information and start collecting this information as soon as practicable.

Response: Concur. FEMA's Federal Insurance and Mitigation Administration will evaluate approaches and estimate costs for obtaining elevation information needed to determine the full-risk rate for policyholders.

FEMA understands the critical need for elevation information, both for the purpose of determining the full-risk rate for policyholders, but also—and perhaps more importantly—to provide homeowners with a true understanding of their risk. Although FEMA agrees there is considerable merit in obtaining this type of information, FEMA is also keenly aware of the significant challenges in obtaining this information in a cost-effective manner and with adequate precision to determine the full-risk rates for flood insurance policyholders.

While the current method for acquiring elevation information may be expensive, new and evolving methodologies and technologies may provide opportunities for FEMA to more cost effectively and otherwise obtain this information. FEMA will explore technological advancements and engage with industry to determine if this is feasible and practical. Challenges that FEMA will work through as it explores implementing this recommendation include the availability of technology, building information data, readily available elevation data, and current flood hazard data.

More specifically, FEMA will evaluate the appropriate approach, including the legal parameters, for obtaining or requiring the submittal of such data, the required level of specificity needed for accurate rate-setting of structures that do not currently have elevation data, the technical feasibility of data-collection and associated costs, and recommendations for who should bear the cost of obtaining that data. Estimated Completion Date: June 30, 2014.

Again, thank you for the opportunity to review and comment on the draft report. Technical comments addressing, among other issues, GAO's estimate of the financial impact–the differences between subsidized and full-risk premium rates–to NFIP, were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,

Jim H. Crumpacker
Director
Departmental GAO-OIG Liaison Office

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Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Alicia Puente Cackley, (202) 512-8678 or cackleya@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jill Naamane and Patrick Ward (Assistant Directors); William Chatlos; Barb El Osta; Christopher Forys; Isidro Gomez; Cathy Hurley; Jacquelyn Hamilton; Karen Jarzynka-Hernandez; Courtney LaFountain; May Lee; Barbara Roesmann; Jena Sinkfield; Melvin Thomas; Frank Todisco; Sonya Vartivarian; and Monique Williams made key contributions to this report.

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